

State Tax Department
Leg. Reg. 11-1A
Series 1A

Title 110
Legislative Rule

~~WEST VIRGINIA ADMINISTRATIVE REGULATIONS~~

STATE TAX DEPARTMENT

~~LEGISLATIVE~~

Chapter 11-1A
Series 1A
(1984)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 3/13/84
Administrative Law Division

Subject: Appraisal of Property for Periodic Statewide
Reappraisals for Ad Valorem Property Tax Purposes.

Section 1. General.

1.01. Type of Regulations. -- These regulations are
a "legislative rule" as defined in W. Va. Code § 29A-1-2(d)
(1982).

1.02. Scope. -- These regulations clarify and
implement state law as it relates to the appraisal at market
value of certain species of real and personal property under
W. Va. Code § 11-1A-1 et seq.

1.03. Authority. -- These regulations are issued
under the authority of W. Va. Code § 11-1A-1(f), § 11-1A-11
(1983), and § 64-2-11(1a)(11) (1984).

W. Va. Code §
11-1A-1(f) gnd
11-1A-11

1.04. Filing Date. -- These legislative regulations
were originally filed as proposed legislative regulations
in the Secretary of State's Office on September 1, 1983,
and a public hearing was held on October 5, 1983. They
were revised and again filed on November 18, 1983.
Public hearings were held in seven locations around the

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State on December 19, 1983. The proposed regulations were approved by the Tax Commissioner and filed in the State Register on January 5, 1984. They were amended as required by W. Va. Code § 64-2-11(1a)(11) (1984) and filed in the State Register on March 13, 1984.

1.05. Effective Date. -- These regulations become effective on April 12, 1984.

1.06. Citation. -- These regulations may be cited as: W. Va. Leg. Reg. 11-1A, Series 1A § _____, page _____ (1984).

~~Sections 2 through 10 are reserved.~~

Section 2 Reserved

3	11
4	"
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Section 11.01

Section 11. -- Valuation of Certain Classes or Species of
Property.

11.01. Background.

(a) By September 1, 1983, the Tax Commissioner was required to propose a legislative rule for submission to the Legislature in accordance with W. Va. Code § 29A-3-1 et seq., describing in detail the methods whereby the market value (appraised value) of all real and personal property except residential and farm surface real property, will be determined during the first statewide reappraisal. W. Va. Code § 11-1A-11.

(b) This proposed rule was originally filed on September 1, 1983, and a public hearing was convened on October 5, 1983. Subsequent to the public hearing and comment period, this rule was amended and refiled in the State Register on November 18, 1983. A second public hearing was held on December 19, 1983. This proposed legislative rule was approved by the Tax Commissioner and filed in the State Register on January 5, 1984. This rule will not take effect until after an act of the Legislature is passed authorizing its promulgation.

(c) On March 10, 1984, the Legislature approved Com. Sub. for Senate Bill No. 425, making it effective from passage. That bill enacted W. Va. Code § 64-2-11(1a)(11) authorizing

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the State Tax Commissioner to promulgate the proposed legislative rule filed in the State Register on January 5, 1984, after making certain amendments specified in W. Va. Code § 64-2-11(1a)(11) (1984). Those amendments having been made, this legislative rule was again filed in the State Register on March 13, 1984. As provided in W. Va. Code § 29A-3-13(b) (1983) they take effect on April 12, 1984.

Section 11.02(a)

11.02. Scope, Use of Rule and Construction.

(a) Scope. -- This rule prescribes how the appraised value of all species of property except residential and farm surface real property will be determined during the statewide reappraisal mandated by the West Virginia Constitution, article X, § 1b. This rule does not define what property is subject to assessment for ad valorem property taxes. Second, this rule does not prescribe how the appraised values determined under it will be adjusted on account of substitutions, accretions, improvements, additions, replacements, destructions, removals, casualties, acts of God, waste or any like occurrence.¹ Third, this rule does not describe how the phase-in of increased valuation, if any, resulting from the first statewide reappraisal will apply to real and personal property.² Fourth, this rule does not prescribe when appraised values determined under it will first be used.³

(b) Use of Rule. -- This rule shall be followed by all persons valuing property for purposes of the statewide reappraisal in all counties in which such property is located or has a tax situs. This is necessary in order to

¹W. Va. Code § 11-1A-14(b) requires the Tax Commissioner to propose a legislative rule covering this subject on or before September 1, 1984.

²W. Va. Code § 11-1A-22 relates to determination of the phase-in, application and limitations.

³W. Va. Code § 11-1A-14(c) prohibits use of the first statewide reappraisal until the Legislature directs their use.

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meet the requirement in W. Va. Const. art. X, §§ 1 and 1b, that ad valorem property taxes be equal and uniform throughout the State. Consequently, once this rule is finally promulgated it shall be binding upon the Tax Commissioner and his employees, county assessors and their employees, county commissions sitting as boards of equalization and review and administrative appraisal review boards and the Board of Public Works, until amended or repealed by the Tax Commissioner in the manner prescribed by law, or abrogated by statutory amendment, or decision of the West Virginia Supreme Court of Appeals. See W. Va. Code § 11-1A-24 (1983). The objective of these regulations is the appraisal of all real and personal property at "market value."

(c) Construction. -- This rule shall be applied, and interpreted in case of any ambiguity, in conformity with the West Virginia Constitution, art. X, §§ 1, 1a and 1b, and the several provisions of the West Virginia Code relating to the definition and determination of appraised value for purposes of ad valorem property taxation. In no event shall this rule be construed as requiring any property to be appraised in excess of its market value, or as subjecting to tax any property that is exempt from ad valorem property taxation under laws of the United States or this State.

Section 11.03

11.03. Annual Updating. -- This rule shall be reviewed annually and amended as necessary in accordance with provisions and requirements of W. Va. Code § 29A-3-1 et seq., in order to properly reflect any future changes in statutory or case law, to clarify application(s) of existing laws or legislative regulations and to amend policies and procedures of the State Tax Department adopted by procedural or interpretive regulations to implement such laws or regulations. Whenever this rule requires the Tax Commissioner to annually determine factors such as capitalization rates, royalty rates multipliers, stumpage price, etc., notice of his determinations shall be given to the public by filing notice thereof in the State Register; and by sending a copy of the notice to each assessor.

Section 11.04(a)

11.04. Valuation of Active and Reserve Coal Properties.

(a) General. -- Coal is one of the several estates in real property which may be owned either as a separate interest or in conjunction with other interests, usually as fee ownership or as mineral ownership. If coal is owned as a separate estate, either absolute or as a leasehold interest, West Virginia property tax law requires such ownership to be listed, valued and taxed based on its true and actual value. Coal may be owned without being mined. Coal rights may exist where no coal is actually present, or where the coal is unmineable or mined out. For valuation purposes this regulation classifies coal property ownership into the following categories:

- (1) Active
- (2) Active reserves
- (3) Inactive reserves
- (4) Mined-out/Unmineable/Barren

(b) Definitions.

(1) Acres Mined. -- Acres mined per year is the average annual production as defined in 11.04(b)(4) divided by the product of the thickness (in feet) of the coal seam being mined as detailed in mining permit reports times 1800 tons per acre

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foot times the recovery rate according to the actual recovery of coal per acre being experienced at the mining operation.

(2) Active Mining Property. -- This term refers to a mineable and merchantable seam of coal on a parcel involved in a mining operation. For the purposes of determining active mining property, contiguous parcels under one ownership or owned or leased by inter-related businesses or individuals shall be treated as one parcel. The maximum active mining portion for each seam for each mining operation on a parcel is fifteen (15) years times the acres mined [as defined in § 11-04(b)(1)] for deep mines or ten (10) years times the acres mined for surface and auger mines. If the mineable and merchantable acreage remaining in the seam(s) being mined is less than the maximum amounts listed above, then the remaining acreage will be considered the active mining property. If more than one seam on a parcel is being actively mined, then each such seam represents separate active mining property. In the application of the herein provided valuation formula on "active mining property," the appropriate formula cal-

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culatation will be based upon the actual market to which the coal from the tract and seam is currently being sold, whether it is "metallurgical" or "steam."

If more than one mining operation is mining a given coal seam on the same parcel, then each such mining operation has a separate active mining property. However, under no circumstances shall the sum of the active acres for all mining operations on a seam exceed the number of acres on a parcel. As necessary, the Commissioner shall apportion the number of acres for each mining operation, based upon a review of relevant leases, and the respective rates of average annual production.

(3) Active Reserves. -- This term means and includes the entire residual acreage of mineable and merchantable coal for each seam being actively mined in excess of the active mining property; or the number of acres corresponding to twenty-five (25) years times the acres mined per year [$\S$ 11.04(b)(1)], whichever is less. In the application of the herein provided valuation formula on "active reserves," the appropriate formula calculation will be based upon the actual market

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to which the coal from that tract and seam is currently being sold, whether it is "metallurgical" or "steam."

(4) Average Annual Production. -- The average annual rate of coal production, in tons per fiscal year, ending June 30th of each calendar year, is generally determined by a weighted average of three (3) years net production.

The weighted average shall be determined by multiplying the most recent year's production by .4, the previous two (2) years production multiplied by .3, and the resulting three (3) figures added together to arrive at the average annual production. However, if there is no production during the most recent fiscal year then the property will be valued as inactive reserves.

When there has been no production during the second or third most recent fiscal year, the production for the current year will be factored by .5 and the production for the earlier fiscal year in which production existed will be factored by .5 and the resulting two figures will be added together to arrive at the average annual production.

If there was no production in both the second

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and third most recent fiscal years then the production for the most recent fiscal year will be factored by 1.0 and the resulting figure will be the average annual production.

(5) Barren. -- Those properties where coal rights are separately and/or individually owned, and the existence of one or more coal seams has not been established.

(6) Capitalization Rate. -- A rate used to convert an estimate of income into an estimate of market value. [For further explanation see § 11.04(a)(1)(C).]

(7) Inactive Reserves. -- Inactive reserves are those seams of coal, or portions thereof, which are mineable and merchantable but are not active mining property, or active reserves.

(8) Life of Mining Operation. -- The life of a deep mining operation shall be fifteen (15) years, or the number of years required to exhaust the seam at the average annual production [§ 11.04(b)(4)] rate, whichever is less. The life of a surface or auger mining operation shall be ten (10) years, or the number of years required to exhaust the seam at the average annual production rate, whichever

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is less. Fractional years will be rounded to nearest whole number.

(9) Merchantable Coal. -- Coal which is ordinarily used for sale and can usually be sold at a profit.

(10) Metallurgical Coal. -- This term shall mean bituminous coal that is suitable for making coke by industries that refine, smelt, and work with iron and/or steel.

(11) Mineable Coal. -- Coal which can be mined under present day mining technology and economics.

(12) Mined-Out. -- A seam of coal, or any portion thereof, which is depleted by prior mining operations and which is not mineable and merchantable by modern technology.

(13) Mining Operation. -- This term shall mean an enterprise engaged in actively obtaining or preparing to obtain coal or its by-products from the earth's crust, including underground, surface and auger mines. Each mining operation may have more than one area designated as "Active Mining Property" as defined in Section 11.04(b)(2). The designation of "Active Mining Property" areas shall be determined as follows:

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(i) If the mining operation is producing coal from one seam under a Department of Natural Resources or Department of Mines permit, then that operation will be designated as an "Active Mining Property." However, if the mining operation is producing coal from more than one seam under a Department of Natural Resources or Department of Mines permit, then each active seam will be designated as an "Active Mining Property."

(ii) If the mining operation is producing coal from one seam at different portals and/or faces under one specific Department of Natural Resources or Department of Mines permit, then that operation will be designated as an "Active Mining Property." However, if the production of coal involves different mining techniques (e.g. surface, auger or deep mining method), or if mining sites are separate and generally independent, then such sites will be designated as separate "Active Mining Properties."

(14) Multiplier. -- This term shall mean the "present worth of one per period" for the life of

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the mining operation [§ 11.04(b)(8)] employing the capitalization rate determined in section 11.04 (c)(1)(C), as determined by a standard mid-year life Inwood table.

(15) Royalty Rate. -- The royalty rates determined annually by the Tax Commissioner are the current market royalty rates for arms-length, willing-buyer, willing-seller, transactions for each of the four categories of coal mining operations derived in section 11.04(c)(B). The royalty rates are deemed to be paid to each owner of a coal estate for all actively mined property.

(16) Steam Coal. -- This term shall mean bituminous coal that is mineable and merchantable but that is not suitable for making coke by industries that refine, smelt, and work with iron and/or steel.

(17) Unmineable Coal. -- Coal which is not mineable and merchantable as defined above.

(c) Valuation Methods.

(1) Method for Determining Value of Active Mining Property.

(A) General. -- The value of active mining property shall be the average annual production times a royalty rate times a multi-

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plier. In no case will the active mining property be valued at less than its value as inactive reserve property.

(B) Royalty Rate. -- For use in the formula prescribed by this regulation, the royalty rate(s) shall be determined for each of the following four (4) different types of coal mining operations.

- (1) Deep mines, steam coal;
- (2) Deep mines, metallurgical coal;
- (3) Surface and auger mines, steam coal; and
- (4) Surface and auger mines, metallurgical coal.

These royalty rates shall be established annually by the Tax Commissioner after a review of recorded, willing seller-willing buyer arms-length coal property leases that have occurred in the State of West Virginia during the eight (8) years (W. Va. Code § 11-1A-3) prior to the appraisal date and through inspection of any other appropriate information. The review will place a greater emphasis on the information and leases trans-

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acted during the most recent years. The Tax Commissioner will maintain and publish this survey (report) on royalty rates on or before March 31 of each year; will accept written public comment on the survey until May 1 of each year; and issue the final royalty rates on or before July 1 of each year. This survey of royalty rates will be constructed (to the maximum possible extent) to indicate the following: (1) county in which leased property is located, (2) deed book, page number, (3) lessor-lessee, (4) date recorded, (5) acreage involved, (6) seams involved, (7) type of mining operation, and (8) consideration made. Those cases where the leasehold transaction fails to contain a royalty consideration will not be included in the survey. From this survey, the Tax Commissioner will select the royalty rate(s) that best typify such transactions. In order to convert percentage royalty rates into specific dollars per ton rates, the Tax Commissioner will separately conduct a review of West Virginia coal selling prices, and select

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specific selling price rate(s) based on prices best typifying activity in each appraisal year. The selected selling price(s) per ton when multiplied by the percentage royalty will result in the specific dollar per ton royalty rate factor.

(C) Capitalization Rate. -- The capitalization rate will be developed considering the techniques found in general practice in the appraisal profession when developing an income approach valuation estimate. Below is a listing of terms and definitions employed in developing various capitalization rate indicators.

(1) Definitions.

(i) Bands of Investment Discount Component. -- A discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing.

(ii) Discount Component. -- A rate reflecting a provision for return-

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ing to an investor a sum of money equal to the aggregate of the anticipated return-on-investment over the economic life of an investment.

- (iii) Economic Life Method of Recapture. -- A method of developing a recapture rate by estimating the period of time an investment will produce a return and estimating an equal periodic rate of recapture of the investment over this return period.
- (iv) Management Rate. -- A rate reflecting a return to an investor for the management of similar investment portfolios.
- (v) Market Comparison Discount. -- A discount rate derived by dividing income net of the recapture component and property taxes by the arms-length selling price of the property.

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- (vi) Market Comparison Method of Recapture. -- A recapture rate estimated by dividing income net of the discount component and property taxes by the arms-length selling price of the property.
- (vii) Non-liquidity Rate. -- A rate reflecting a return to an investor representing the loss of interest on an investment arising from the time required to sell the investment.
- (viii) Property Tax Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the economic life of an investment.
- (ix) Recapture Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to his investment.
- (x) Risk Rate. -- A rate reflecting a return to an investor necessary

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to attract capital to an investment containing a possible loss of principal and/or interest.

(xi) Safe Rate. -- A rate reflecting a return to a investor on an investment which has little, if any, livelihood of loss of principal or anticipated return on investment.

(xii) Summation Discount Component. -- A discount rate expressed as the aggregate of a safe rate, risk rate, non-liquidity rate, and management rate.

(2) Discussion. -- The capitalization rate as defined in Section 11.04(b)(6) will be determined annually by the Tax Commissioner through the use of generally accepted methods for estimating such rates. The rate so developed will consider a level-terminal income series which is indicative of active mining properties. The capitalization rate used to value active mining properties

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will be developed giving consideration to the following three (3) approaches:

(a) Discount Component

(i) Market Comparison -- Sufficient sales data permitting, the market comparison technique will be employed as the primary indicator for an appropriate discount component. The market comparison discount component will be developed by dividing aggregate royalty rate income streams adjusted for recapture by verified recorded arms-length sales transactions for active mining properties which have occurred in the State of West Virginia during the eight (8) years (W. Va. Code § 11-1A-3) prior to the annual appraisal date. The market comparison discount component selected will be based upon those rate indica-

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tors best typifying activity in this eight (8) year re-search period. In selecting the discount component greater emphasis will be given to information from arms-length sales occurring during the most recent years of the study.

(ii) Summation Technique -- In the absence of sufficient data to statistically support primary consideration of the market comparison technique, the summation techniques will be given primary consideration. The summation discount component will be developed reflecting the following four (4) major sub-components:

- (1) Safe Rate
- (2) Risk Rate
- (3) Non-liquidity Rate
- (4) Management Rate

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The "Safe Rate" will be developed through review of quarterly interest rates offered on thirteen (13) week United States Treasury Bills for a period of three (3) years prior to the appraisal date. The "Risk Rate" will be developed through review of data resulting from an annual survey of lending institutions, such survey reflecting interest rates required on loans for acquisition and/or development of coal properties. This survey will be conducted for a three (3) year period prior to the appraisal date. Results of the survey will be compared to quarterly interest rates offered on thirteen (13) week United States Treasury Bills for the same three (3) year period. An interest differen-

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tial will then be selected representing the "Risk Rate." The "Non-liquidity Rate" will be developed through an annual survey to determine a reasonable estimate of time that coal properties remain on the market before being sold. The market time thus determined will be used to identify United States Treasury Bills with similar time differentials in excess of thirteen (13) week Treasury Bills. The interest differential between these securities will be deemed to be representative of the "Non-liquidity Rate." The "Management Rate" will be developed through a survey of investment firms to identify charges for the management of investment portfolios.

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(iii) Bands-of-Investment --

Data permitting the Bands-of-Investment technique will be considered in conjunction with the two (2) previously mentioned discount estimate components.

(b) Recapture Component -- Selection of a multiplier will be accomplished through access of a standard mid-year life Inwood table. The Inwood table has a factor for recapture built into the table coefficients. Inclusion of a recapture component in the capitalization rate is therefore not appropriate.

(c) Property Tax Component --

This component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class III property.

(3) The surveys referenced in Section 11.04(c)(1)(C)(2) will be conducted and tentative results published by the Tax

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Commissioner on or before March 31 of each year. Public comment on such surveys will be accepted until May 1 of each year, and final results will be issued on or before July 1 of each year.

(2) Valuation of Active Reserves.

(A) General. -- The value of each acre of active reserves shall be one tenth of the per acre value of active mining property.

(B) Per Acre Value of Active Mining Property. -- Per acre value of active mining property equals the value of active mining property as described in § 11.04(c)(1) divided by the number of acres in the active mining property.

(C) In the event that the active reserve value per acre is less than the inactive reserve value per acre, the inactive reserve regional value per acre will be used.

(3) Valuation of Inactive Reserves.

(A) General. -- Inactive reserves shall be valued considering a review of sales reflecting arms-length, willing buyer-willing seller transactions of such properties, and the

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market conditions in the region within which the property is located. The inactive coal reserve value shall be the product of the inactive reserve acres multiplied by the regional inactive reserve value per acre for the region in which the property is located.

(B) Review of Inactive Reserve Coal Property Sales. -- The values per acre for inactive reserves shall be established annually by the Tax Commissioner after review of recorded willing seller-willing buyer arms-length coal property sales that have occurred in the State of West Virginia during the eight (8) years (W. Va. Code § 11-1A-3) prior to the appraisal date, and through inspection of other appropriate information including the effect of the size of the parcels on the per acre value. This review will place a ~~greater~~ emphasis on the information and sales transacted during the most recent years. The Tax Commissioner will maintain and publish this survey (report) of inactive coal property sales on or before March 31 of each year; will accept public comment on the survey

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until May 1 of each year; and issue the final regional values per acre on or before July 1 of each year. This survey of inactive reserve coal sales will be constructed to indicate the following: (1) county in which the property is located, (2) deed book, page number, (3) grantor-grantee, (4) date recorded, (5) acreage involved, (6) coal seams involved, (7) consideration, and (8) consideration per coal acre sold. From this survey, the Tax Commissioner will select the regional values per inactive acre that best typify such transactions.

(C) Inactive Reserve Regions. -- Of the fifty-five counties in West Virginia, the State Geological and Economic Survey has identified that mineable and merchantable coal deposits occur only in forty-four counties.

The forty-four counties containing mineable, merchantable coal seams shall be grouped into five (5) regions based on type of coal seams, location, ownership patterns, mining activity, and sale prices of inactive

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reserves.

- (1) Region 1 - Brooke, Harrison, Marion, Marshall, Monongalia and Ohio Counties.
- (2) Region 2 (No present mining) - Cabell, Calhoun, Doddridge, Hancock, Pocahontas, Putnam, Roane, Tyler, Wetzel, and Wirt Counties and the northwest portion of Kanawha County (Jefferson, Union, Poca Districts that lie north of Elk River).
- (3) Region 3 - Barbour, Grant, Mineral, Preston, Randolph, Taylor, Tucker and Upshur Counties.
- (4) Region 4 - Braxton, Clay, Gilmer, Greenbrier, Lewis, Mason, Nicholas and Webster Counties.
- (5) Region 5 - Boone, Fayette, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne and Wyoming Counties and the southeast portion of Kanawha County (Washington, Malden, Loudon, Cabin Creek Districts, and part of Big Sandy and Elk Districts which lie south of Elk River).

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Of the remaining eleven (11) counties two (2), Jefferson and Hardy, have been classified as non-coal and the other nine (9) Berkeley, Morgan, Hampshire, Pendleton, Monroe, Jackson, Wood, Ritchie, and Pleasants are listed as containing thin, unmineable seams.

If under any circumstances, the coal in any of the eleven (11) counties listed above becomes mineable and merchantable, that county will be classified in the appropriate region.

(D) Multiple Seam Parcels. -- For parcels containing more than one mineable, merchantable seam, the inactive portion of the seam(s) being mined are assigned 100% of the value determined by the method summarized in § 11.04(c)(3). The remaining unmined, inactive seams shall then be ranked according to their mineable, merchantable acreages. The largest seam and the second largest seam are each assigned 100% of the value determined by the method summarized in § 11.04(c)(3). The third largest unmined, inactive seam is

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valued at 75% of the amount as determined by the methods summarized in § 11.04(c)(3).

Subsequent seams are each valued at 50% of the amount determined by the method summarized in § 11.04(c)(3). The final valuation of inactive reserves on a parcel is the sum of each of the individual valuations:

(4) Valuation of Mined-Out/Unmineable/Barren Coal Properties. -- Properties in this category shall be valued at \$1.00 per surface acre.

(5) Summary of Valuation Methods.

(A) Each seam on those properties with mineable and merchantable coal shall be valued as follows.

Active Mining Property

(Average Annual Production)	X	(Royalty Rate Per Ton)	X	(Multiplier)	=	(Active Coal Real Property Value)
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Active Réserve Property

(Active Reserves)	X	(Per Acre Value of Active Mining Property)	X 10%	=	(Active Reserve Coal Real Property Value)
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Inactive Reserve Property

(Total Inactive Reserve Acres)	X	(Regional Per Acre Inactive Reserves Value)	=	(Inactive Coal Reserves Real Property Value)
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(B) Mined-out, unmineable and barren coal

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properties shall be valued at One Dollar (\$1.00) per surface acre.

(C) The total value for coal properties will be the sum of the value of active mining property, active reserves, the inactive reserves and the mined-out, unmineable and barren acres.

(D) If other real property interests are owned in the coal property acreage, then the value of those additional interests shall be added to the total value of the coal properties to arrive at the total real property value.

(6) Leasehold Interests. -- These regulations generally attribute the value of coal to the owner of the coal property. In those circumstances, however, where the owner of the property is subject to a lease requiring the owner to permit mining at royalty rates substantially below current market values, the owner may petition the Assessor, and on appeal, the Tax Commissioner, to attribute a portion of the value of the coal determined by this formula to the leaseholder.

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11.05 Valuation of Producing and Reserve Oil
Properties.

(a) General. -- Oil is one of the several estates in real property which may be owned either as a separate estates in real property or in conjunction with other interests, usually as fee ownership, oil and gas ownership or as minerals ownership. If oil is owned as a separate estate, West Virginia property tax law requires such ownership to be listed, valued and taxed based on its true and actual value. If the interest in oil is part of a larger interest in a tract of property, the value of the oil interest shall be included in the value of the larger interest. Oil may be owned without being produced. Oil rights may exist where no oil is actually present, or where the oil is unproducable or depleted.

(b) Annual Reports. -- The Tax Commissioner will publish an annual report for the variables to be considered in arriving at the value of the specific oil-related property. These reports when required by the regulation will be published, subjected to comment and take effect upon the schedule set out in this section. All such reports must be published on or before the 30th day of April preceding the assessment date, followed by a thirty day period for written public comment. The Tax Commissioner will review the com-

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ments and present the final values of the variables to be used in the assessment year on or before July 1 of each calendar year. These final values will be posted in the county assessors office and the State Register.

(c) Categories for Valuing Oil Bearing Properties. --
Parcels of property thought to bear oil or having the oil mineral interest separated from the fee of the property will be classified as oil producing property, assigned oil reserves or unassigned oil reserves.

(d) Definitions.

(1) "Oil producing property" means property from which oil is being produced or extracted. Oil producing property is limited to the interest or interests underlying an area of up to 40 acres of surface per well with one or more active well(s) on the parcel.

(2) "Assigned oil reserve property" means properties in an area of potential production, as determined by the Tax Department, but from which there has been no past production of oil, or the part of a parcel from which there has been past or current production that lies outside an oil producing property, or the 40 acres of surface per well of oil producing property if the well is

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shut-in for the entire year.

(3) "Unassigned oil reserve property" means properties outside of the area of potential production, as determined by the Tax Department, in which the oil mineral interest has been conveyed separately from the rest of the property, or the 40 acres of surface per well of oil producing property if the well has been plugged and abandoned as required by Article 4, Chapter 22 of the West Virginia Code [W. Va. Code § 22-4-1 et seq. (1981)].

(4) "Working interest" means the fractional interest in oil production subject to operating expenses and owned by the leasehold or operator. Owner operated wells are to be valued using the working interest formula.

(5) "Royalty interest" means the fractional interest in oil production not subject to operating expenses and retained by the oil rights owner or lessor. Overriding royalty interests not incurring operating expenses are treated entirely as royalty interest.

(6) "Flush production" means the production of oil from any well on a producing oil property

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whose initial production date is two years or less prior to the date of valuation.

(7) "Settled production" means the production of oil from all wells on an oil producing property whose initial production date is more than two years prior to the date of valuation.

(8) "Personal property" used in oil production means machinery and equipment in and about the well and all other tangible personal property used in producing oil from the well. It shall not include vehicles or other tangible personal property not permanently used in production.

(9) "Operator" means any person or persons, corporation, partnership, adventure or other enterprise which proposes to or does locate, drill, manage or abandon any well.

(e) Methods of Valuation.

(1) General. -- For oil producing property, its value shall be determined by (1) a formula which applies a multiplier to the average daily production of the well(s) for working interest and royalty interest property, plus (2) a value attributable to the personal property used in production per well times the number of producing wells

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on the property for working interest property. Where ownership is split through a lease or royalty arrangement, different multipliers will be used for the working interest and the royalty interest. Each term in this computation is discussed below.

(2) Average Daily Production. -- The average daily production of an oil well is its production rate, measured in terms of oil field standard 42 gallon barrels, for the year preceding the annual tax assessment date, divided by the number of full or partial days of well production. Partial days shall include time allowed for oil to collect between pumpings. Full or partial days shall not include time when well non-production results from workover, redrilling, or well maintenance.

(3) Percentage Interest in the Oil. -- Where the ownership of oil in place is divided through a lease or other arrangement, the compensation to the owner of the property is derived by designating a percentage of the production to be the royalty payment to the owner. The remainder is the working interest. The Tax Commissioner will annually determine an assumed standard working and royalty percentage interest through a review of

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oil and gas leases from throughout the State. The royalty and working interest are used in the method described in the regulations for determination of the formulas to be used to appraise oil producing properties.

(4) Average Industry Market Price. -- The Tax Commissioner will annually derive the average industry market price by reviewing the price paid per barrel by the major West Virginia crude oil purchasers. The Tax Commissioner's annual report on the average industry market price should reflect a reduction for average Federal Windfall Profits Tax and West Virginia Business and Occupation Taxes deemed to be paid by the working or royalty interests in the production. The average industry market price will be used in the method described in the regulations for determination of the formulas to be used to appraise oil producing properties.

(5) Average Industry Operating Expense. -- The Tax Commissioner will annually determine the average industry operating expense per well and publish that expense in an annual report. The average industry operating expenses per well will

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be used in the method described in the regulations for determination of the formulas to be used to appraise oil producing properties.

(6) Capitalization Rate. -- A capitalization rate will be developed considering the three components set out in § 11.05(e)(6)(B). This rate will be used to select the factor(s) from a standard mid-year life present worth of one table using a compound interest premise. (See § 11.05(e)(10) for an example.) Below is a listing of terms and definitions employed in developing this capitalization rate.

(A) Definitions.

(i) Bands of Investment Discount Component. -- A discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing.

(ii) Discount Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to the aggregate of the anticipated return-on-investment over the economic life of an

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investment.

- (iii) Management Rate. -- A rate reflecting a return to an investor for the management of similar investment portfolios.
- (iv) Market Comparison Discount. -- A discount rate derived by dividing income net of the recapture component and property taxes by the arms-length selling price of the property.
- (v) Non-liquidity Rate. -- A rate reflecting a return to an investor representing the loss of interest on an investment arising from the time required to sell the investment.
- (vi) Property Tax Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the economic life of an investment.
- (vii) Recapture Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to his investment.

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(viii) Risk Rate. -- A rate reflecting a return to an investor necessary to attract capital to an investment containing a possible loss of principal and/or interest.

(ix) Safe Rate. -- A rate reflecting a return to a investor on an investment which has little, if any, likelihood of loss of principal or anticipated return on investment.

(x) Summation Discount Component. -- A discount rate expressed as the aggregate of a safe rate, risk rate, non-liquidity rate, and management rate.

(B) Discussion. -- The capitalization rate will be determined annually by the Tax Commissioner through the use of generally accepted methods for estimating such rates. The rate so developed will assume a declining-terminal income series which is indicative of oil producing properties. The capitalization rate used to value oil properties will be developed considering (1) a discount rate determined primarily by the summation technique,

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(2) a recapture component, and (3) a property tax component.

(1) Discount Component

(i) Summation Technique -- The summation technique will be given primary consideration in the valuation of oil producing property. The summation technique will determine a discount component which will be used to calculate the present value of the future income of the oil producing property utilizing the following four (4) major sub-components:

- (1) Safe Rate
- (2) Risk Rate
- (3) Non-liquidity Rate
- (4) Management Rate

The "Safe Rate" will be developed through review of quarterly interest rates offered on thirteen (13) week United States Treasury Bills for a period of three (3) years prior to the appraisal date.

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The "Risk Rate" will be developed through review of data resulting from an annual survey of lending institutions, such survey reflecting interest rates required on loans for acquisition and/or development of oil producing properties. This survey will be conducted for a three (3) year period prior to the appraisal date. Results of the survey will be compared to quarterly interest rates offered on thirteen (13) week United States Treasury Bills for the same three (3) year period. An interest differential will then be selected representing the "Risk Rate." The "Non-liquidity Rate" will be developed through an annual survey to determine a reasonable estimate of time that oil properties remain on the market before being sold. The market time thus determined will be used to identify

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United States Treasury Bills with similar time differentials in excess of thirteen (13) week Treasury Bills. The interest differential between these securities will be deemed to be representative of the "Non-liquidity Rate." The "Management Rate" will be developed through a survey of investment firms to identify charges for the management of investment portfolios.

(ii) Bands-of-Investment/Market Comparison. -- Data permitting, the bands-of-investment and market comparison techniques will be used to verify the summation discount component.

(2) Recapture Component -- Selection of a multiplier will be accomplished through access of a standard mid-year life present worth of one table premised on a compound interest rate. This table has a factor for recapture built into the

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table coefficients. Inclusion of a recapture component in the capitalization rate is therefore not appropriate.

(3) Property Tax Component -- This component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class III property.

(7) Deemed Average Daily Production Rate. -- For the purpose of determining multipliers for wells of different productive capacities, wells will be divided into three classifications. Those classifications will be:

- (a) .0 through .750 barrels of average daily production.
- (b) .751 through 2.000 barrels of average daily production.
- (c) Greater than 2.000 barrels of average daily production.

For the sole purpose of calculating the multiplier applicable to each classification of production, all wells within each classification will be deemed to have the same rate of production and those rates are as follows:

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	<u>Classification</u>	<u>Deemed ADP Rate</u>
(a)	.0 - .750 ADP	.750 ADP
(b)	.751 - 2.000 ADP	1.500 ADP
(c)	2.000+	4.000 ADP

(8) Average Industry Production Decline Rate. --

The Tax Commissioner will annually derive the average production decline rate by a review of well production records located at the West Virginia Department of Mines, Office of Oil and Gas and data provided by companies and individuals. The Tax Commissioner will annually publish a report on the result of this review. The average production decline rate will be used in conjunction with the deemed average daily production rate for calculation of multipliers for the various production classifications.

(9) Multipliers. -- The multiplier serves to combine mathematically the effects of the deemed average daily production rate, average industry market price of oil, average industry well operating expense, working and royalty interest, flush and settled production, average production decline rate and a capitalization rate. [See § 11.05(e)(10)] This multiplier will not be constant for all oil produc-

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ing properties. Each category defined below will have a separate multiplier and the procedure and results of these income analyses will be published in an annual report by the Tax Commissioner. The multipliers are to be used for oil producing properties.

Separate multipliers shall be derived for each of the following twelve (12) categories:

- (A) Working interest in settled production for average daily production between 0 and .750 barrels per day of oil.
- (B) Working interest in settled production for average daily production of between .751 and 2.000 barrels per day.
- (C) Working interest in settled production for average daily production of more than 2.000 barrels per day.
- (D) Working interest in flush production for average daily production of between 0 and .750 barrels per day.
- (E) Working in flush production for average daily production of between .751 and 2.000 barrels per day.
- (F) Working interest in flush production for

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average daily production of over 2.000 barrels per day.

(G) Royalty interest in settled production for average daily production between 0 and .750 barrels per day.

(H) Royalty interest in settled production for average daily production between .751 and 2.000 barrels per day.

(I) Royalty interest in settled production for average daily production in excess of 2.000 barrels per day.

(J) Royalty interest in flush production for average daily production between 0 and .750 barrels per day.

(K) Royalty interest in flush production of average daily production of between .751 and 2.000 barrels per day.

(L) Royalty interest in flush production for average daily production of 2.000 barrels per day.

(10) EXAMPLE:

The multipliers for each category will be determined as shown in this example. The numbers used in this example are not the result of any actual survey, although they may approximate or duplicate the results of such surveys. This example assumes that the necessary annual surveys have been performed with the results as follows:

Average Daily Production (ADP) Rate = .75 barrel

Working Interest = 7/8 of production

Royalty Interest = 1/8 of production

Average Industry Market Price = \$22.50/barrel

Average Industry Operating Expense = \$3,600/year

Capitalization Rate = 15%

Average Industry Decline Rate = 7% Per Year
for Settled Production

Gross Income = Percentage Interest ADP x 365
x \$22.50

Net Income = Gross Income - Operating Expenses

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(11) Personal Property Used in Oil Production. --

The Tax Commissioner will annually derive and publish a report of the average value of the personal property used in oil production. The Tax Commissioner will review the comments on the report and present the value for the personal property used in oil production. This value will be multiplied by the number of producing and shut-in wells on the property to determine the overall value of personal property used in oil production.

(f) Summary of Method of Valuing Oil Producing Property. -- Each active oil property in West Virginia will be valued in the following way:

Working Interest

1. (Working Interest
Average Daily X (Multiplier) = (Value of Oil
Production) Producing Property)

PLUS

2. (Value for Personal X (Number of Wells) = (Total Value of
Property Used in Personal Property
Oil Production) Used in Oil Production)

Royalty Interest

1. (Royalty Interest
Average Daily X (Multiplier) = (Value of Oil
Production) Producing Property)

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(g) Valuation of Assigned Reserves. -- The value per acre of assigned reserves shall be equal the annual lease payment per acre times the multiplier.

A valuation schedule for assigned oil reserve properties will be determined annually by the Tax Commissioner on a regional basis. The Tax Commissioner will annually conduct a review of oil agreements transacted at arms length in all fifty-five counties to determine the annual lease payment per acre, as well as the lease term. The Tax Commissioner will also conduct a review of non-dry completions in all 55 counties as reported to the West Virginia Department of ^{Energy} ~~Mines~~, ^{Division} ~~Office~~ of Oil and Gas. The assigned reserve multiplier is the sum of the projected annual income stream during the lease term discounted in each year by a capitalization rate. The regions, the annual lease payment per acre, lease term, and multiplier will be published annually in a report by the Tax Commissioner. The Tax Commissioner will review the public comments on the report and present the valuation determination for assigned oil reserve property.

(h) Valuation of Unassigned Oil Reserves. -- Unassigned Reserves will be valued at the nominal rate of \$1.00 per acre. Unassigned reserves will be properties outside of the area of potential production as determined by the Tax

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Commissioner. The Tax Commissioner will annually publish a report of the regions which are classified as unassigned oil reserves.

(i) Valuation of Wells that Produce Both Oil and Gas. -- The valuation of these producing wells shall be determined by use of the methods described in § 11.05 for oil and § 11.06 for gas excluding the value for personal property used in both methods. These values, including the value of personal property, shall then be summed to result in the overall value of the oil and gas producing acreage.

The Tax Commissioner will annually derive and publish a report of the average value of the personal property used in oil and gas production. This value will be multiplied by the number of producing and shut-in wells on the property to determine the overall value of personal property used in oil and natural gas production.

Section 11.06(a)

11.06 Valuation of Producing and Reserve Natural
Gas Properties.

(a) General. -- Natural gas is one of the several estates in real property which may be owned either as a separate interest or in conjunction with other interests, usually as fee ownership, oil and natural gas ownership or as minerals ownership. If natural gas is owned as a separate estate, West Virginia property tax law requires such ownership to be listed, valued and taxed based on its true and actual value. If the interest in natural gas is part of a larger interest in a tract of property, the value of the natural gas interest shall be included in the value of the larger interest. Natural gas may be owned without being produced. Natural gas rights may exist where no natural gas is actually present, or where the natural gas is unproducible or depleted.

(b) Annual Reports. -- The Tax Commissioner will publish an annual report for the variables to be considered in arriving at the value of the specific natural gas related property. These reports when required by the regulation will be published, subjected to comment and take effect upon the schedule set out in this section. All such reports must be published on or before the 30th day of April preceding the assessment date, followed by a thirty day period for

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written public comment. The Tax Commissioner will review the comments and present the final value of the variables to be used in the assessment year on or before July 1 of each calendar year. These final values will be posted in the county assessor's office and the State Register.

(c) Categories for Valuing Natural Gas Bearing Properties. -- Parcels of property thought to bear natural gas or having the natural gas mineral interest separated from the fee of the property will be classified as natural gas producing property, assigned natural gas reserves or unassigned natural gas reserves.

(d) Definitions.

(1) "Natural gas producing property" means the property from which natural gas is being produced or extracted. Natural gas producing property is limited to the interest or interests underlying an area of 125 acres of surface per well with active wells on the parcel.

(2) "Assigned natural gas reserve property" means properties in an area of potential production, as determined by the Tax Department, but from which there has been no past production of natural gas, or the part of a parcel from which there has been past or current production that lies outside a

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natural gas producing property, or the 125 acres of surface per well of natural gas producing property if the well is shut-in for the entire year.

(3) "Unassigned natural gas reserve property" means properties outside of the area of potential production, as determined by the Tax Department, in which the natural gas mineral interest has been severed from the rest of the property, or the 125 acres of surface per well of natural gas producing property if the well has been plugged and abandoned as required by Article 4, Chapter 22 of the West Virginia Code [W. Va. Code § 22-4-1 et seq. (1981)].

(4) "Working interest" means the fractional interest in natural gas production subject to operating expenses and owned by the leasehold or operator. Owner operated wells are to be valued using the working interest formula.

(5) "Royalty interest" means the fractional interest in natural gas production not subject to operating expenses and retained by the natural gas rights owner or lessor. Overriding royalty interests not incurring operating expenses will be treated entirely as a royalty interest.

(6) "Flush production" means the production of

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gas from any well on a natural gas producing property whose initial production date is two years or less prior to the date of valuation.

(7) "Settled production" means the production of gas from all wells on a natural gas producing property whose initial production date is more than two years prior to the date of valuation.

(8) "Personal property" used in natural gas production means machinery and equipment in and about the well and all other tangible personal property used in producing gas from the well.

It shall not include vehicles or other tangible personal property not permanently used in production.

(9) "Operator" means any person or persons, corporation, partnership, adventure or other enterprise which proposes to or does locate, drill, manage or abandon any well.

(e) Methods of Valuation.

(1) General. -- For natural gas producing property, its value shall be determined by (1) a formula which applies a multiplier to the quantity of the gross receipts minus the royalties paid for the working interest or a multiplier times the

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gross royalty receipts for the royalty interest; plus (2) a value attributable to the personal property used in production per well times the number of producing wells on the property when valuing working interests. Where ownership is split through a lease or royalty arrangement, different multipliers will be used for the working interest and the royalty interest. Each term in this computation is discussed below.

(2) Percentage Interest in the Natural Gas. --

Where the ownership of natural gas in place is divided through a lease or other arrangement, the compensation to the owner of the property is derived by designating a percentage of the production to be the royalty payment to the owner. The remainder is the working interest. The Tax Commissioner will annually determine an assumed average working and royalty percentage interest through a review of oil and gas leases from throughout the State.

(3) Average Industry Market Price. -- The Tax Commissioner will annually derive and report the average industry market price by reviewing the price paid per MCF by the major West Virginia

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natural gas purchasers. The average industry market price will be used in the method described in the regulations for determination of the formulas to be used to appraise natural gas producing properties.

(4) Average Industry Operating Expense. -- The Tax Commissioner will annually determine and report the average industry operating expense per well. The average industry operating expenses per well will be used in the method described in the regulations for determination of the formulas to be used to appraise natural gas producing properties.

(5) Average Production Rate. -- The Tax Commissioner will annually determine and report the production rate of natural gas wells through review of information filed with the West Virginia Department of Mines, Office of Oil and Gas. The production rate will be used in the method described in the regulations for the determination of the formulas to be used to appraise natural gas producing properties.

(6) Average Industry Production Decline Rate. -- The Tax Commissioner will annually derive and

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report the average industry production decline rate by a review of well production records located at the West Virginia Department of Mines, Office of Oil and Gas and data provided by companies and individuals. The average industry production decline rate will be used in the method described in the regulations for determination of the formulas to be used to appraise natural gas producing properties.

(7) Capitalization Rate. -- A capitalization rate will be developed considering the three components set out in § 11.06(e)(7)(B). This rate will be used to select the factor(s) from a standard mid-year life present worth of one table using a compound interest premise. (See § 11.06(e)(9) for an example.) Below is a listing of terms and definitions employed in developing this capitalization rate.

(A) Definitions.

(i) Bands of Investment Discount Component. -- A discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing.

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- (ii) Discount Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to the aggregate of the anticipated return-on-investment over the economic life of an investment.
- (iii) Management Rate. -- A rate reflecting a return to an investor for the management of similar investment portfolios.
- (iv) Market Comparison Discount -- A discount rate derived by dividing income net of the recapture component and property taxes by the arms-length selling price of the property.
- (v) Non-liquidity Rate. -- A rate reflecting a return to an investor representing the loss of interest on an investment arising from the time required to sell the investment.
- (vi) Property Tax Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the economic

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life of an investment.

(vii) Recapture Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to his investment.

(viii) Risk Rate. -- A rate reflecting a return to an investor necessary to attract capital to an investment containing a possible loss of principal and/or interest.

(ix) Safe Rate. -- A rate reflecting a return to a investor on an investment which has little, if any, livelihood of loss of principal or anticipated return on investment.

(x) Summation Discount Component. -- A discount rate expressed as the aggregate of a safe rate, risk rate, non-liquidity rate and management rate.

(B) Discussion. -- The capitalization rate will be determined annually by the Tax Commissioner through the use of generally accepted methods for estimating such rates. The rate so developed will consider a

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declining-terminal income series which is indicative of natural gas producing properties. The capitalization rate used to value natural gas properties will be developed considering (1) a discount component determined primarily by the summation technique, (2) a recapture component, and (3) a property tax component.

(1) Discount Component

(i) Summation Technique -- The summation technique will be given primary consideration in the valuation of natural gas producing property. The summation technique will determine a discount component which will be used to calculate the present value of the future income of the natural gas producing property utilizing the following four

(4) major sub-components:

- (1) Safe Rate
- (2) Risk Rate
- (3) Non-liquidity Rate
- (4) Management Rate

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The "Safe Rate" will be developed through review of quarterly interest rates offered on thirteen (13) week United States Treasury Bills for a period of three (3) years prior to the appraisal date. The "Risk Rate" will be developed through review of data resulting from an annual survey of lending institutions, such survey reflecting interest rates required on loans for acquisition and/or development of natural gas producing properties. This survey will be conducted for a three (3) year period prior to the appraisal date. Results of the survey will be compared to quarterly interest rates offered on thirteen (13) week United States Treasury Bills for the same three (3) year period. An interest differential will then be selected representing the "Risk Rate." The "Non-liquidity Rate"

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will be developed through an annual survey to determine a reasonable estimate of time that natural gas properties remain on the market before being sold. The market time thus determined will be used to identify United States Treasury Bills with similar time differentials in excess of thirteen (13) week Treasury Bills. The interest differential between these securities will be deemed to be representative of the "Non-liquidity Rate." The "Management Rate" will be developed through a survey of investment firms to identify charges for the management of investment portfolios.

- (iii) Bands-of-Investment/Market Comparison. -- Data permitting, the bands-of-investment and market comparison techniques will be used to verify the summation discount component.

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START (2) Recapture Component -- Selection of a multiplier will be accomplished through access of a standard mid-year life present worth of one table premised on a compound interest rate. This table has a factor for recapture built into the table coefficients. Inclusion of a recapture component in the capitalization rate is therefore not appropriate.

(3) Property Tax Component -- This component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class III property.

(8) Multipliers. -- The multiplier combines mathematically the effects of average industry market price of natural gas, average industry well operating expenses, working and royalty interest, average production rate, average production decline rate, flush and settled production and a capitalization rate. [See § 11.06(e)(9)] This multiplier will not be constant for all natural gas producing properties. Each category defined below will have a separate multiplier. The multi-

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plier will be derived by conducting an income analysis of a typical West Virginia well based on the aforementioned variables and published in an annual report.

Separate multipliers shall be established by the Tax Commissioner for the following four (4) categories:

- (1) Working intrest in settled production.
- (2) Working interest in flush produciton.
- (3) Royalty interest in settled production.
- (4) Royalty interest in flush production.

(9) EXAMPLE:

The income analysis chart will be in the following forms. The figures used in these charts are hypothetical values of what may be derived from the annual reports and are not to be considered actual figures, although they may approximate or duplicate the results of actual annual reports.

Variables

Annual Industry Production Rate = 6000 MCF

Working Interest = $\frac{7}{8}$ of production

Royalty Interest = $\frac{1}{8}$ of production

Average Industry Market Price = 2.60/MCF

Average Industry Operating Expenses = \$3000

Average Industry Production Decline Rate = 7%

Capitalization Rate = 15%

Gross Income = Working interest production
x \$2.60

Net Income = Gross Income - Operating
Expenses

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(10) Personal Property Used in Natural Gas Production. -- The Tax Commissioner will annually derive and publish a report of the average value of the personal property used in natural gas production. This value will be multiplied by the number of producing wells on the property to determine the overall value of personal property used in natural gas production.

(f) Summary of Method for Valuing Active Natural Gas Producing Property. -- Each active natural gas well in West Virginia will be valued in the following way:

Working Interest

1. (Gross Receipts
Less Royalties) X (Multipliers) = (Working Interest
Value of Natural Gas
Producing Property)

PLUS

2. (Value for Personal
Property Used in Natural Gas Production) X (Number of Wells) = (Total Value of
Personal Property
Used in Natural Gas
Production)

Royalty Interest

1. (Royalties) X (Multiplier) = (Royalty Interest
Value of Natural Gas
Producing Property)

Section 11.06(g)

(g) Valuation of Assigned Natural Gas Reserves. -- The value per acre of assigned reserves shall equal the annual lease payment per acre times the multiplier.

A valuation schedule for assigned natural gas reserve properties will be determined annually by the Tax Commissioner on a regional basis. The Tax Commissioner will annually conduct a review of natural gas agreements transacted at arms length in all fifty-five counties to determine the annual lease payment per acre, as well as the lease term. The Tax Commissioner will also conduct a review of non-dry completions in all 55 counties as reported to the West Virginia Department of Mines, Office of Oil and Gas. The multiplier is the sum of the projected annual income stream during the lease term discounted in each year by a capitalization rate. The regions, the annual lease payment per acre, lease term, and multiplier will be published annually in a report by the Tax Commissioner and will be used to determine the values for assigned natural gas reserve property.

(h) Valuation of Unassigned Natural Gas Reserves. -- Unassigned reserves will be valued at the nominal rate of \$1.00 per acre. Unassigned reserves will be properties outside of the area of potential production as determined by the Tax Commissioner. The Tax Commissioner will annually

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publish a report on the regions which are classified as unassigned natural gas reserves.

(i) Valuation of Wells that Produce Both Natural

Gas and Oil. -- The valuation of these producing wells shall be determined by use of the methods described in § 11.05 for oil and § 11.06 for natural gas, excluding the value for personal property used in both methods. These values shall be summed with the value of the personal property to result in the overall value of the oil and natural gas producing acreage. The Tax Commissioner will annually derive and publish a report of the average value of the personal property used in oil and natural gas production. This value will be multiplied by the number of producing and shut-in wells on the property to determine the overall value of personal property used in oil and natural gas production.

Section 11.07(a)

11.07. Valuation of Timberland.

(a) General. -- The appraised value (market value) of timberland shall be determined on the basis of the potential of the timberland to produce future net income. Potential future net income is capitalized in order to determine a present value, which is the appraised value. The ability of a stand of timber to produce wood products for sale or use depends primarily on the quality of the soil and certain topographic and climatic features, and is expressed as site index. Site index is therefore the principal criterion, influencing the appraised value of timberland. These factors will be reviewed annually by the Tax Commissioner for necessary updating of the method described in order to properly reflect future changes in the market values of timberland.

(b) Timber Productivity Maps. -- The Tax Commissioner shall prepare, or cause to be prepared, timber productivity maps indicating Timberland Productivity Class of forest land soils as Excellent to Very Good, Good to Fair, or Poor.

(c) Timber Productivity Classes. -- Timber productivity classes shall be based on site index and the ability of the site to yield timber, measured in thousands of board feet (MBF) per acre (Scribner rule) or cords per acre at the end of a rotation of eighty (80) years.

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(d) Appraised Value of Timberland. -- The appraised value (market value) per acre of timberland shall be calculated by dividing average annual net income by the capitalization rate. [Details of the procedure for determining appraised value are found in paragraph (f)].

(e) Definitions. -- As used in this regulation, the following terms shall have the meanings ascribed herein:

(1) "Average annual gross income" means the gross income per acre calculated by dividing the end-of-rotation income by eighty (80) years.

(2) "Average annual net income" means the average annual gross income per acre minus the annual management cost per acre.

(3) "Capitalization rate" means the rate determined annually by the Tax Commissioner or his designated agents through the use of accepted standard methods for calculating such rates.

(4) "Christmas Trees" means evergreen trees commonly known as Christmas trees, including fir, hemlock, spruce and pine trees, that will be sold for use as Christmas trees.

(5) "Forest land" is a broad term describing land whose dominant characteristic is the support of tree growth. Forest land can include timberland

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but is to be distinguished from timberland for the purposes of this regulation.

(6) "End-of-rotation income potential" means the amount of income per acre calculated by multiplying the end-of-rotation volume by the stumpage price.

(7) "Gross income" means the end-of-rotation (80 years) gross income potential determined for each productivity class using the following formula:
$$\text{Yield (MBF and/or Cords Per Acre)} \times \text{Stumpage Price} = \text{Gross Income.}$$

(8) "Management costs" means the cost determined annually by the Tax Commissioner to be the average annual cost of maintaining and protecting a producing forest. Maintenance costs include costs of inventory, boundary survey, and security. Protection costs include costs of protection against wildfire, insects and diseases, and vandalism. Management costs will be determined as an average for the entire State or by regions, or by Timberland Productivity Classes and will be deducted from gross annual income per acre to obtain net annual income per acre.

(9) "Orchard" means a systematic planting of fruit trees as opposed to individual plantings for

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ornamental purposes.

(10) "Owner of timber" means any person who owns an interest in timber, including a sublessor and an owner of a contract right to cut timber. Such owner of timber must have a right to cut timber for sale on his own account or for use in his, hers or its trade or business in order to own an interest in timber that is subject to ad valorem property taxes.

(11) "Site index" means a method of measuring the productivity of a site to grow trees. It is the height that average dominant and codominant trees will attain at a given age. For ad valorem property tax purposes, it shall be the height of upland oaks at fifty (50) years of age.

(12) "Stumpage price" means the market value of standing trees (on the stump) prior to felling and removal, and is expressed in dollars per unit of volume (MBF or cords). For appraisal purposes, real stumpage price will be assumed to be stable over time, and shall be calculated by the Tax Commissioner from quarterly reports prepared by the Department of Natural Resources and other available sources. A five-year moving average

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shall be computed in order to minimize the effects of short-term fluctuations. Stumpage price shall be computed for each stumpage price region in order to reflect regional differences in markets, topography, and accessibility and shall be posted in the offices of the county assessors.

(13) "Stumpage price region" means a geographical region of the State, usually consisting of several counties, in which conditions of the timber, timber markets, topography, and accessibility are sufficiently similar to result in similar stumpage prices at any one point in time.

(14) "Timber" means and includes trees of any marketable species, whether planted or of natural growth, standing or down, located on public or privately owned land, which are suitable for commercial or industrial use.

(15) "Timberland" means:

(A) a parcel, or contiguous parcels, of at least ten (10) acres, that is (1) stocked with trees of any size or species capable of producing a usable crop of wood, or formerly having such tree cover within the last three years, (2) not currently developed or being

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used for non-forestry purposes, and (3) devoted primarily to the production, in reasonable commercial quantities, of timber and timber products. A parcel or contiguous parcels supporting growth capable of producing commercial crops will be presumed to be timberland unless precluded as set out in Section 11.07(e)(15)(B).

(B) The following types of land, however, are not considered to be timberland:

(1) A parcel, or contiguous parcels, on which there is standing timber that is less than ten (10) acres;

(2) Property withdrawn from wood products production for use as parks, orchards, pasture, tillable fields, nurseries, Christmas tree plantations, or other uses which may result in the existence of tree cover but where commercial utilization of the trees for wood products is precluded;

(3) Homesites or building sites, including adjacent areas which are occupied by trees used or manicured for ornamental

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purposes;

(4) Farm woodlots or forest lands which are part of a farm and which are used primarily to support the needs of the farm for timber, fuel, and other farming purposes. Once a portion of such land is sold or cut for timber, the forest land will be taxed as timberland property, unless the land is used for some other purpose in which case it will be taxed according to its actual use.

(5) Land within corporate limits, unless the land has been devoted principally to the production of timber products and managed for that purpose, on a continuous basis for the preceding five years.

(16) "Timberland productivity classes" means timberland classified as Class 1 (excellent to very good), Class 2 (good to fair), or Class 3 (poor), according to Site Index.

Appendix E

Table of
Timberland Productivity Classes

Timberland Productivity Class	Site Index	Yield Per Acre over 80 Years*	
		MBF	Cords
Class 1 (Excellent to very good)	80 (75 or more)	14.5	10.5
Class 2 (Good to fair)	70 (65-74)	9.7	14.9
Class 3 (Poor)	50 (less than 65)	1.5	20.7

*Scribner rule. Source: Schnur, G. Luther.
USDA Tech. Bul. No. 560. 1937
The Tax Commissioner may annually adopt a
different timber scale and to revise yield
annually as standards of timber utilization
change or as new information becomes available
on timber yields of forest stands.

(17) "Timberland productivity maps" means those maps prepared showing the productivity class of all timberland in this State. The primary source of information for preparation of these maps shall be the Soil Survey, published by United States Department of Agriculture (USDA) Soil Conservation Service.

(A) In those counties where soil surveys are not yet prepared, the best available information shall be used.

(B) For Webster and Pocahontas Counties:

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G. R. Trimble, Jr., "An Equation for Predicting Oak Site Index Without Measuring Soil Depth", Journal of Forestry, 62:325-327.

(C) For Wetzel, Doddridge, Braxton, Clay, and Gilmer Counties: L. R. Auchmoody and H. Clay Smith, Oak Soil-Site Relationships in Northern West Virginia. (USDA For. Serv. Res. Paper NE 434, 1979.)

(D) For Wayne, Lincoln, Boone, Logan, Mingo, and McDowell Counties: Unpublished results of research at West Virginia University (1983).

(f) Procedure for Determining Value. -- The following is a step-by-step procedure for determining the appraised value (market value) of timberland.

(1) All timberland is mapped according to productivity class See Section 11.07(e)(15) on USGS 7.5 minutes quadrangle sheets (1" = 2000'). The timberland productivity maps are then enlarged to a scale of 1" = 400' in order to conform to the scale of tax maps.

(2) Average stumpage price (5 year moving average) is determined by stumpage price regions from Department of Natural Resources quarterly

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reports and other information.

(3) End-of-rotation (80 years) gross income potential per acre is determined for each productivity class using the following formula.
$$\text{Yield (MBF and/or cords per acre)} \times \text{stumpage price} = \text{gross income.}$$

(4) Annual gross income potential per acre is determined using the following formula.
$$\text{Gross income potential per acre} \div 80 \text{ years} = \text{annual gross income potential per acre.}$$

(5) Annual net income potential per acre is determined by deducting the annual management cost per acre from annual gross income potential per acre.

(6) Market value per acre is determined by capitalizing the net annual income per acre.

(7) A table is prepared showing market value of timberland by productivity classes.

(8) Mylar maps are prepared showing tax parcels and timberland productivity class.

(9) The appraised (market value) value of the property is calculated using the maps and table of timberland values. If a parcel contains two or more productivity classes, total value will be

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determined on a proportional basis, as in the following example: 100 acre parcel, of which:

30 acres in Class 1
45 acres in Class 2
25 acres in Class 3
Appraisal = 30 AC x Class 1 Value
 +45 AC x Class 2 Value
 +25 AC x Class 3 Value
 Total Appraised Value Timberland

(g) Summary of Method of Determining Appraised Value. --

The formula to be used in determining the appraised value of property categorized as timberland is as follows:

$$\text{Appraised Value Per Acre} = \frac{\text{Total Yield per acre} \times \text{stumpage price} - \text{Management Cost Per Acre}}{\frac{80 \text{ Years}}{\text{Capitalization Rate}}}$$

(h) Valuation of less Than 10 Acres. -- A parcel, or contiguous parcels, of forest land totalling less than ten (10) acres shall not be considered to be timberland and shall be valued based upon market comparables, without considering the productivity capacity of the site for timber yield.

(i) Valuation of Farm Wood Lots. -- Farm wood lots and the parts of a farm which are in timber shall be included in the valuation of farm property under W. Va. Code § 11-1A-10, except when the timberland is a separate parcel or tract entered in the landbooks, and except when the primary use of the farmland is in commercial forestry or the growing of

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timber for commercial purposes. See W. Va. Code § 11-1A-3(f).

(j) Timberland Improvements. -- Improvements such as roads and service buildings that are a required (usual) part of timber management operations shall not be subject to an additional appraisal over and above the appraisal of the timberland. Improvements that are not a necessary part of the timber management operations, such as dwellings, cottages, hunting camps, and other recreational facilities, shall be subject to additional appraisals.

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11.08. Valuation of Other Active Natural Resources

(a) General.

(1) Other active natural resource interests, such as limestone, fireclay, dolomite, sandstone, sand and gravel, and salt are some of the several estates in real property which may be owned either as a separate interest, or in conjunction with other interests, usually as fee ownership or as minerals ownership. If the other active natural resource interest is owned as a separate estate, either absolute or as a leasehold interest, West Virginia property tax law requires such ownership to be listed, valued and taxed based on its true and actual value.

(2) Other West Virginia natural resource interests, such as lead and zinc, manganese, iron ore, radioactive minerals, and oil shale, which at present are not being actively mined shall be valued in accordance with this regulation, when such interests are separated from the fee interest or begin being actively mined.

(3) These other natural resource interests may be owned without being mined. These other natural resources rights may exist where the natural

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resource is not actually present, or where the natural resource is unmineable or mined out.

(4) For valuation purposes, this regulation classifies other natural resource property ownership into the following categories:

- (A) Active
- (B) Active Reserves
- (C) Inactive Reserves
- (D) Mined-Out/Unmineable/Barren

(b) Definitions.

(1) Acres Mined. -- Acres mined per year is the average annual production as defined in 11.08(b)(4) divided by the product of the thickness in feet of the natural resource seam being mined as detailed in mining permit reports times the tons per acre foot, as set out below, times the recovery rate according to the actual recovery of the natural resource per acre being experienced at the mining operation.

For use in these regulations the following in-place tons per acre-foot figures will be used:

Limestone = 3,600 tons per acre foot
Sandstone = 3,600 tons per acre foot
Clay and Shale = 3,050 tons per acre foot

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Sand and Gravel = 2,400 tons per acre foot

Salt = 2,950 tons per acre foot

(2) Active Mining Property. -- This term refers to the mineable and merchantable natural resource on a parcel involved in a mining operation. For the purposes of determining active mining property, contiguous parcels under one ownership or owned or leased by inter-related businesses or individuals shall be treated as one parcel. The active mining acreage of any natural resource or resources on a parcel shall be calculated by multiplying acres mined times the determined life of the mine. If this calculation, however, results in an acreage figure that is higher than the total mineable acreage of that natural resource on that parcel, the lower figure shall be used. This calculation shall be made of each "other natural resource" activity being mined on the parcel.

For use in these regulations, the maximum active mining property for each natural resource will be as follows:

(A) Surface Limestone. -- The active mining property of a surface limestone mine shall be derived by multiplying ten (10) years times

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acres mined

(B) Deep Limestone. -- The active mining property of a deep limestone mine shall be derived by multiplying fifteen (15) years times acres mined.

(C) Sandstone. -- The active mining property of a surface sandstone mine shall be derived by multiplying ten (10) years times acres mined.

(D) Surface Clay and Shale. -- The active mining property of a surface clay and shale mine shall be derived by multiplying ten (10) years times acres mined.

(E) Deep Clay and Shale. -- The active mining property of a deep clay and shale mine shall be derived by multiplying fifteen (15) years times acres mined.

(F) Sand and Gravel. -- The active mining property of a sand and gravel mine shall be derived by multiplying ten (10) years times acres mined.

(G) Salt. -- The active mining property around each salt well shall be a maximum of 35 acres. After a well's first year of

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production, active mining property shall be derived by subtracting acres mined from the 35 acres.

(3) Active Reserves. -- This term means and includes the entire residual acreage of the mineable and merchantable natural resource being mined in excess of the active mining property, or the number of acres corresponding to 25 years times the acres mined per year [§ 11.08(b)(1)], whichever is less.

(4) Average Annual Production. -- The annual rate of natural resource production, in tons per fiscal year, ending June 30th of each calendar year, determined by a weighted average of three (3) years net production.

The weighted average shall be determined by multiplying the most recent year's production by .4, the previous two (2) years production multiplied by .3, and the resulting three (3) figures added together to arrive at the average annual production. However, if there is no production during the most recent fiscal year then the property will not be valued as active mining property for that year.

Where there has been no production during the

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second or third most recent fiscal year, the production for the current year will be factored by .5 and the production for the earlier fiscal year in which production existed will be factored by .5 and the resulting two figures will be added together to arrive at the average annual production.

If there was no production in both the second and third most recent fiscal years then the production for the most recent fiscal year will be factored by 1.0 and the resulting figure will be the average annual production.

(5) Barren. -- This term means and includes those properties where other natural resource rights are separately and/or individually owned, and the existence of any natural resource has not been established.

(6) Capitalization Rate. -- A rate used to convert an estimate of income into an estimate of market value. [For further explanation see § 11.08(a)(1)(C)]

(7) Inactive Reserves. -- Inactive reserves are those natural resource acres or portions thereof which are mineable and merchantable but are not

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active mining property or active reserves.

(8) Life of Mining Operation. -- The life of the mining operation (in years) shall be equal to the active mining property acreage divided by acres mined. The maximum mine life shall be ten (10) years for surface mines involving limestone, sandstone, clay and shale, and sand and gravel, and for wells used in the production of salt, and fifteen (15) years for deep mines involving limestone, and clay and shale. In calculating the years involved in the life of active mining property, all fractional figures will be rounded to the nearest whole number.

(9) Merchantable Natural Resource. -- A merchantable natural resource is one ordinarily extracted for sale and can usually be sold at a profit, or which is extracted for use in the manufacture of other products (e.g., salt for use in making paint and chemicals).

(10) Mineable Natural Resource. -- A mineable natural resource is one which could be profitably mined by judicious methods.

(11) Mined-Out. -- A natural resource, or any portion thereof, determined to be depleted by

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prior mining operations, and which is not mineable and merchantable by modern technology.

(12) Mining Operation. -- This term shall mean an enterprise engaged in actively obtaining or preparing to obtain a natural resource or its by-products from the earth's crust, including underground, surface and auger mines. Each mining operation may have more than one area designated as "Active Mining Property" as defined in Section 11.08(b)(2). This designation of "Active Mining Property" areas shall be determined as follows:

(i) If the mining operation is producing a natural resource from a Department of Natural Resources or Department of Mines permit, then that operation will be designated an "Active Mining Property." However, if the mining operation is producing from more than one natural resource under a Department of Natural Resources or Department of Mines permit, then each active natural resource will be designated as an "Active Mining Property."

(ii) If the mining operation is producing a natural resource at different locations, portals and/or faces under one specific

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Department of Natural Resources or Department of Mines permit, then that operation will be designated as one "Active Mining Property." However, if the production of the natural resource involves different mining techniques (e.g. surface, auger or deep mining method), or if mining sites are separate and generally independent, then such sites will be designated as separate "Active Mining Properties."

(13) Multiplier. -- This term shall mean the "present worth of one per period" for the life of the mining operation employing the capitalization rate determined in section 11.08(c)(1)(C), as determined by a standard mid-year life Inwood table.

(14) Royalty Rate. -- The royalty rates determined annually by the Tax Commissioner are the current market royalty rates for arms-length, willing-buyer, willing-seller, transactions for each of the different types of natural resources and types of mining operations derived in section 11.08(c)(1)(B). The royalty rates are deemed to be paid to each owner of a natural resource estate for all active-

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ly mined property.

(15) Unmineable Natural Resource. -- A natural resource which is not mineable and merchantable as defined above.

(c) Valuation Methods.

(1) Method for Determining Value of Active Mining Property.

(A) General. -- The value of active mining property shall be the average annual production times a royalty rate times a multiplier. In no case will the active mining property be valued at less than its value as inactive reserve property.

(B) Royalty Rate. -- For use in the formula prescribed by this regulation, the royalty rate(s) will be determined for each of the different types of natural resources and types of mining operations. These will include specific royalty rates for (1) limestone (dolomite) surface mine; (2) limestone (dolomite) deep mine; (3) sandstone (industrial) surface mine; (4) sandstone (aggregate) surface mine; (5) clay and shale surface mine; (6) clay and shale deep mine; (7) sand

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and gravel surface mine; and (8) salt wells. These royalty rates shall be established annually by the Tax Commissioner after review of recorded, willing seller-willing buyer arms-length natural resource property leases that have occurred in the State of West Virginia during the eight (8) years (W. Va. Code § 11-1A-3) prior to appraisal date, and through inspection of other appropriate information. This review will place a greater emphasis on the information and leases transacted during the most recent years. For those natural resources that are not involved in any recorded lease agreements, the Tax Commissioner will derive a royalty rate through surveys conducted with private appraisal and/or engineering companies, data provided by the West Virginia Geological and Economic Survey, West Virginia Department of Natural Resources, West Virginia Department of Mines, West Virginia Department of Highways, and other appropriate information from the specific natural resource companies involved. The Tax Commissioner will maintain

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and publish this survey (report) of royalty rates on or before March 31 of each year; will accept written public comment on the survey until May 1 of each year; and issue final royalty rates on or before July 1 of each year. This survey of royalty rates will be constructed to indicate the following: (1) county in which leased property is located; (2) deed book, page number; (3) lessor-lessee; (4) date recorded; (5) acreage involved; (6) type of mining operation; (7) consideration; and (8) a narrative on rates derived for those non-leased natural resources. From this survey, the Tax Commissioner will select the royalty rate(s) that best typify such transactions. In order to convert percentage royalty rates into specific value per ton rates, the Tax Commissioner will conduct a review of the specific natural resource selling prices in West Virginia by requesting such information from private purchasers, State Department of Highways, and West Virginia Geological and Economic Survey, as well as other informative sources available

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and select specific selling price rates(s) based on prices best typifying activity in each appraisal year. The selected selling prices per ton when multiplied by the percentage royalty rate will result in a price per ton royalty rate factor.

(C) Capitalization Rate. -- This capitalization rate will be developed considering the techniques found in general practice in the appraisal profession when developing an income approach valuation estimate. Below is a listing of terms and definitions employed in developing various capitalization rate indicators.

(1) Definitions.

(i) Bands of Investment Discount Component. -- A discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing.

(ii) Discount Component. -- A rate

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reflecting a provision for returning to an investor a sum of money equal to the aggregate of the anticipated return-on-investment over the economic life of an investment.

(iii) Economic Life Method of Recapture.

-- A method of developing a recapture rate by estimating the period of time an investment will produce a return and estimating an equal periodic rate of recapture of the investment over this return period.

(iv) Management Rate. -- A rate reflecting a return to an investor for the management of similar investment portfolios.

(v) Market Comparison Discount.

--A discount rate derived by dividing income net of the recapture component and property taxes by the arms-length selling price of the property.

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- (vi) Market Comparison Method of Recapture. -- A recapture rate estimated by dividing income net of the discount component and property taxes by the arms-length selling price of the property.
- (vii) Non-liquidity Rate. -- A rate reflecting a return to an investor representing the loss of interest on an investment arising from the time required to sell the investment.
- (viii) Property Tax Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the economic life of an investment.
- (ix) Recapture Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to his investment.
- (x) Risk Rate. -- A rate reflecting a return to an investor necessary

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to attract capital to an investment containing a possible loss of principal and/or interest.

(xi) Safe Rate. -- A rate reflecting a return to a investor on an investment which has little, if any, livelihood of loss of principal or anticipated return on investment.

(xii) Summation Discount Component. -- A discount rate expressed as the aggregate of a safe rate, risk rate, non-liquidity rate, and management rate.

(2) Discussion. -- The capitalization rate as defined in Section 11.08(b)(6) will be determined annually by the Tax Commissioner through the use of generally accepted methods for estimating such rates. The rate so developed will consider a level-terminal income series which is indicative of active mining properties. The capitalization rate used to value active mining properties

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will be developed giving consideration to the following three (3) approaches:

(a) Discount Component

(i) Market Comparison -- Sufficient sales data permitting, the market comparison technique will be employed as the primary indicator for an appropriate discount component. The market comparison discount component will be developed by dividing aggregate royalty rate income streams adjusted for recapture by verified recorded arms-length sales transactions for active mining properties which have occurred in the State of West Virginia during the eight (8) years (W. Va. Code § 11-1A-3) prior to the annual appraisal date. The market comparison discount component selected will be based upon those rate

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indicators best typifying activity in this eight (8) year research period. In selecting the discount component greater emphasis will be given to information from arms-length sales occurring during the most recent years of the study.

(ii) Summation Technique -- In the absence of sufficient data to statistically support primary consideration of the market comparison technique, the summation techniques will be given primary consideration. The summation discount component will be developed reflecting the following four

(4) major sub-components:

- (1) Safe Rate
- (2) Risk Rate
- (3) Non-liquidity Rate
- (4) Management Rate

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The "Safe Rate" will be developed through review of quarterly interest rates offered on thirteen (13) week United States Treasury Bills for a period of three (3) years prior to the appraisal date. The "Risk Rate" will be developed through review of data resulting from an annual survey of lending institutions, such survey reflecting interest rates required on loans for acquisition and/or development of natural resource properties. This survey will be conducted for a three (3) year period prior to the appraisal date. Results of the survey will be compared to quarterly interest rates offered on thirteen (13) week United States Treasury Bills for the same three (3) year

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period. An interest differential will then be selected representing the "Risk Rate." The "Non-liquidity Rate" will be developed through an annual survey to determine a reasonable estimate of time that natural resource properties remain on the market before being sold. The market time thus determined will be used to identify United States Treasury Bills with similar time differentials in excess of thirteen (13) week Treasury Bills. The interest differential between these securities will be deemed to be representative of the "Non-liquidity Rate." The "Management Rate" will be developed through a survey of investment firms to identify charges for the management of

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investment portfolios.

(iii) Bands-of-Investment --

Data permitting the Bands-of-Investment technique will be considered in conjunction with the two (2) previously mentioned discount estimate components.

(b) Recapture Component. -- Selection of a multiplier will be accomplished through access of a standard mid-year life Inwood table. The Inwood table has a factor for recapture built into the table coefficients. Inclusion of a recapture component in the capitalization rate is therefore not appropriate.

(c) Property Tax Component -- The effective property tax rate will be estimated by multiplying the assessment ratio by the average statewide levy rate for Class III property.

(3) The surveys referenced in Section

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11.08(c)(1)(C)(2) will be conducted and tentative results published by the Tax Commissioner on or before March 31 of each year. Public comment on such surveys will be accepted until May 1 of each year, and final results will be issued on or before July 1 of each year.

(2) Valuation of Active Reserves.

(A) General. -- The value of each acre of active reserves shall be one-tenth of the per acre value of active mining property.

(B) Per Acre Value of Active Mining Property. -- Per acre value of active mining property equals the value of active mining property as described in § 11.08(c)(1) divided by the number of acres in the active mining property.

(C) In the event that the active reserve value per acre is less than the inactive reserve value per acre, the inactive reserve value per acre will be used.

(3) Valuation of Inactive Reserves. -- Inactive reserve values for limestone, sandstone, clay and shale, sand and gravel, and salt shall be deter-

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mined annually by the Tax Commissioner. This determination will be conducted by the Tax Commissioner after review of recorded willing seller-willing buyer arms-length natural resource property sales that have occurred in the State of West Virginia during the eight (8) years (W. Va. Code § 11-1A-3) prior to the appraisal date, and through inspection of other appropriate information. This review will place a greater emphasis on the information and sales transacted during the most recent years. For those natural resource properties which are not involved in any recorded sale agreements, the Tax Commissioner will derive the valuation through surveys conducted with private appraisal and/or engineering companies, data provided by the West Virginia Geological and Economic Survey, West Virginia Department of Natural Resources, West Virginia Department of Mines and the West Virginia Department of Highways, and other appropriate information as requested from the natural resource owners or producers. The Tax Commissioner will maintain and publish this survey (report) of inactive natural resource property sales on or before March 31 of each year; will

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accept written public comment on the survey until May 1 of each year; and issue the final values per acre on or before July 1 of each year. This survey of inactive reserve natural resource sales will be constructed to indicate the following:

- (1) county in which the property is located;
- (2) deed book, page number;
- (3) grantor-grantee;
- (4) date recorded;
- (5) acreage involved;
- (6) natural resource involved;
- (7) consideration,
- (8) consideration per natural resource acre sold and
- (9) a narrative on values derived for those natural resources not involved in sales.

From this survey, the Tax Commissioner will select the values per acre for each natural resource that best typify such transactions.

Also as part of this review, the Tax Commissioner will consider the effect of inactive mining properties being adjacent to active mining properties and active reserves in determining values under this section.

(4) Valuation of Mined-Out/Unmineable/Barren Other Natural Resource Properties. -- Properties in this category shall be valued at \$1.00 per surface acre.

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(5) Summary of Valuation of Methods.

Table 5 - Valuation of Other Natural Resources

(A) Properties with mineable/merchantable
natural resources shall be valued as follows:

Active Mining Acres

(Average Annual Natural Resource Production in Tons)	X	(Royalty Rate Per Ton)	X	(Multiplier)	=	(Active Natural Resource Real Property Value)
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Active Reserve Acres (Part of Active Operation)

(Total Active Reserve Acres)	X	(Per Acre Value of Active Min- ing Property)	X	10%	=	(Active Reserve Other Natural Resource Real Property)
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Inactive Reserve Acres (Leased or Permitted Acres - No Mining)

(Total Inactive Reserve Acres)	X	(Inactive Reserve Value Per Acre)	=	(Inactive Reserve Other Natural Resource Real Property Value)
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(B) Mined-out, unmineable and barren natural
resource properties shall be valued at one
dollar \$1.00 per surface acre.

(C) The total value for the natural resource
properties will be the sum of the value of
the active mining property(s), active re-
serves, the inactive reserves and the mined-
out/ unmineable/barren acres.

(D) If other real property interests are
owned in the natural resource acreage, then

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the value of those additional interests shall be added to the total value of the natural resource properties to arrive at the total real property value.

(6) Leasehold Interests. -- These regulations generally attribute the value of the natural resource to the owner of the natural resource property. In those circumstances, however, where the owner of the property is subject to a lease requiring the owner to permit mining at royalty rates substantially below current market values, the owner may petition the assessor, and on appeal, the Tax Commissioner, to attribute a portion of the value of the coal determined by this formula to the leaseholder.

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11.09. Valuation of Commercial and Industrial
Real Property.

(a) General. -- This regulation describes the method for determining the appraised value (market value) of commercial and industrial real property other than natural resource real property, land utilized for farming purposes and operating public utility property.

(1) The appraised value (market value) of commercial and industrial real property is the price at or for which a particular parcel would sell if it was sold to a willing buyer by a willing seller in an arms-length transaction without either the buyer or the seller being under any compulsion to buy or sell. In determining appraised value, primary consideration shall be given to the trends of price paid for like or similar property in the area or locality wherein such property is situated over a period of not less than three (3) nor more than eight (8) years preceding the base year of the statewide reappraisal. Additionally, for purposes of appraisal of any tract or parcel of real property used for commercial or industrial purposes, including chattels real, the appraisal shall consider the following factors:

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- (A) The location of such property;
- (B) Its site characteristics;
- (C) The ease of alienation thereof, considering the state of its title, the number of owners thereof, and the extent to which the same may be the subject of either dominant or servient easements;
- (D) The quantity of size of the property and the impact which its sale may have upon surrounding properties;
- (E) If purchased within the previous eight years, the purchase price thereof and the date of each such purchase;
- (F) Recent sale of, or other transactions involving, comparable property within the next preceding eight years;
- (G) The value of such property to its owner;
- (H) The condition of such property;
- (I) The income, if any, which the property actually produces and has produced within the next preceding eight years; and
- (J) Any commonly accepted method of ascertaining the market value of any such property, including techniques and method

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peculiar to any particular species of property if such technique or method is used uniformly and applied to all property of like species.

(2) There are two types of improvements which are considered in the appraisal process; these are improvements to the land and improvements on the land.

(A) Improvements to the land are land improvements, the value of which are included in the value of the land. Some examples of these improvements include privately owned drainage systems, driveways, walks etc.

(B) Improvements on the land are buildings and structures. They are valued separate and apart from the land.

(3) In addition to improvements, other important considerations affecting the value of land, excluding farm land, are:

- (A) Location,
- (B) Size,
- (C) Shape,
- (D) Topography,
- (E) Accessibility,

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- (F) Present use,
- (G) Highest and best use,
- (H) Easements,
- (I) Zoning,
- (J) Availability of utility,
- (K) Income imputed to land and
- (L) Supply and demand for land of a particular type.

(4) Each of these factors should be considered in the appraisal of a specific parcel. Some, however, may be given more weight than others.

(b) Generally Accepted Appraisal Methods Used to Establish the Value of Industrial and Commercial Real Properties.

(1) In determining an estimate of fair market value, the tax commissioner will consider and use where applicable, three generally accepted approaches to value: (A) cost, (B) income, and (C) market data.

A. Cost Approach. -- To determine fair market value under this approach, replacement cost is reduced by the amount of depreciation. In applying the cost approach, the Tax Commissioner will consider three types of

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depreciation: physical deterioration, functional obsolescence, and economic obsolescence.

B. Income Approach. -- A property's present worth is directly related to its ability to produce an income over the life of the property. The selection of an overall capitalization rate will be derived from current available market data by dividing annual net income by the current selling price of comparable properties. The present fair market value of the property shall then be determined by dividing the annual economic rent by the capitalization rate.

C. Market Data Approach. -- The market data approach will be applied by considering the selling prices of comparable properties.

(2) Correlation. -- Once generated, the various estimates of value may be considered in determining a final value estimate. However, the income approach is ordinarily inappropriate for properties such as franchised restaurants, governmental properties, hospitals, etc. In these cases, the cost and/or market approaches may be more suitable

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in estimating fair market value.

When possible, the most accurate form of appraisal should be used, but because of the difficulty in obtaining necessary data from the taxpayer, or due to the lack of comparable commercial and/or industrial properties, choice between the alternative appraisal methods may be limited.

(3) Industrial and Commercial Site Classi-

fication. -- For purposes of valuing active and residual industrial and commercial land in West Virginia, valuing sites shall be separated into four broad categories: heavy industrial sites, light industrial or commercial sites, industrial parks, and mine sites. These sites shall be further classified when appropriate into active and residual portions. These classifications will be considered when applying and establishing the valuation method to the industrial and/or commercial properties.

(c) Definitions.

(1) Active Industrial or Commercial Land. That portion of land used for industrial and commercial purposes.

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(2) Capitalization Rate. -- A rate used to convert an estimate of future income to an estimate of present market value.

(3) Commercial Property. -- Income producing real property used primarily but not exclusively for the sale of goods or services, including but not limited to offices, warehouses, retail stores, apartment buildings, restaurants and motels.

(4) Cost Approach. -- The appraisal process in which replacement cost of improvements, less all types of depreciation, is added to a land value in determining an estimate of the fair market value for improved real property.

(5) Economic Obsolescence. -- A loss in value of a property arising from "outside forces" such as changes in use, legislation that restricts or impairs property rights, or changes in supply and demand relationships.

(6) Economic Rent. -- The rental amount which a space or property would attain in the open market at the time of appraisal, whether it is lower, higher or the same as the actual contract rent.

(7) Fair Market Value. -- The highest price in terms of money that a property will bring in a

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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.

(8) Functional Obsolescence. -- The loss of value due to factors such as excess capacity, changes in technology, flow of material, seasonal use, part-time use or other like factors. The inability to perform adequately the functions for which an item was designed.

(9) Heavy Industrial Site. -- An industrial site containing more than five (5) acres of physical plant.

(10) Income Approach. -- The appraisal process of discounting an estimate of future income into an expression of present worth.

(11) Industrial Parks. -- A parcel or group of parcels dedicated primarily to commercial and industrial development.

(12) Light Industrial or Commercial Site. -- An industrial site containing five (5) or less acres of land.

(13) Market Data Approach -- The appraisal process

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of examining sales data and translating such data into an estimate of present worth.

(14) Mine Sites. -- A parcel of land containing the mine portal and/or shaft, parking lots, water treatment facilities, mine fan areas, refuse piles and preparation plant sites.

(15) Physical Deterioration. -- A loss in value due to wear and tear.

(16) Replacement Cost. -- The cost of constructing a building or improvement having the same utility, but using modern materials, design, and workmanship.

(17) Residual Industrial or Commercial Land. -- That portion of a parcel of real estate that is currently non-productive in terms of the industrial or commercial activity located thereon. This classification of land would include land held for industrial expansion, land marginally suitable for industrial use and excess acreage.

(d) Valuation of Leaseholds in Industrial and Commercial Real Properties.

(1) General.

(A) A leasehold in real property is taxable for ad valorem property tax purposes

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if it has a separate and independent value from the freehold. Great A&P Tea Co., Inc. v. Davis, W. Va., 278 S.E.2d 352 (1981).

Where leaseholds are of short duration, the rent paid will usually reflect income to the owner of the freehold commensurate with the fair market value of the real property.

Under ordinary conditions, the leasehold itself will not have any ascertainable market value. Consequently, in the normal circumstance, the appraised value of the freehold subject to a leasehold shall be determined in the same manner that the appraised value of similar commercial or industrial real property not subject to a leasehold is determined.

(B) However, under circumstances involving long-term leaseholds where the leasehold is itself a marketable asset of value, the leasehold shall be valued as hereinafter provided in this regulation. The leasehold interest being a chattel real shall be listed and taxed as Class III or Class IV tangible personal property depending on the location of the

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freehold. See W. Va. Code §§ 11-5-3, 11-5-4 and 11-8-5.

(C) The appraised value of a freehold estate shall be the appraised value of the freehold determined without regard to the leasehold, minus the appraised value of the leasehold.

(2) Definitions.

(A) Leasehold. -- (Also known as a leasehold estate.) An interest in real property created by a lease contract. The leasehold is the right to occupy and use the property for the term fixed in the lease, at a stated rental, and subject to conditions set forth in the contract.

(B) Net Rental. -- An agreement specification whereby the lessor receives an annual rent net to him, with the lessee paying all property taxes, insurance and cost of building maintenance, as well as operating expenses.

(C) Gross Lease. -- A lease agreement wherein the lessor pays all fixed charges (property taxes, maintenance, etc.).

(D) Property Residual Method of Valuation. --

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This method assumes that, at the expiration of the term of the lease, even though the building may have little value, the land will have a reversionary value. Both the income stream for the estimated useful life of the building and the reversionary interest in the land are discounted to present worth. This method is applicable where the building is old, the site under-improved, or the improvements have a short remaining useful or economic life.

(E) Leased Fee. -- The interest remaining in one who has granted possession and occupancy to another for a designated term under a lease contract. Generally, it is the interest of the owner in his property after it has been leased.

(F) Freehold Estate. -- An estate in land or other real property, of uncertain duration; that is, either of inheritance or which may possibly last for the life of a tenant at the least. For an estate to be freehold it must possess two characteristics:

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- (1) Immobility.
- (2) Indeterminate duration (no fixed termination of the interest.)
- (3) In valuing a leasehold:
 - (A) The total value of the property must be estimated and then allocated among the various interests in the property under the terms of the lease; and
 - (B) The appraiser must determine whether or not value has been created as a result of a favorable lease, in addition to the total value of the property.
- (4) In deciding whether a leasehold has value, and if so, what value to assign, the appraiser must:
 - (A) Estimate the value of the entire property, as though not encumbered by the lease, then
 - (B) Estimate the value of one of the partial interests, either the leasehold estate of the lessee or the leased fee of the lessor,
 - (C) The value of the partial interest thus arrived at is deducted from the value

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of the entire property to obtain the value of the other partial interest.

(5) To value a leasehold interest, the appraiser shall consider the present (discounted) worth of the rent saving, when the contractual rent at the time of appraisal is less than the current market rent. If the land is improved by the lessee, then the value of the leasehold interest shall be the value of the saving in ground rent, if any, in addition to the value (not cost) of the improvements of the lessee. If the contractual rent is greater than the currently established market rent, the present worth of the difference shall be subtracted from the value of the improvement.

(6) When a property is under long-term lease to a prime tenant, such as a nationally-known chain store concern, and the estimated useful life of the building exceeds the term of the lease, the "property residual technique" of evaluation may be used along with other generally accepted appraisal techniques, i.e., cost and market data approaches.

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11.10. Valuation of Commercial and Industrial
Personal Property.

(a) General. -- The object of these regulations is to provide absolute methodologies for appraising commercial and industrial furniture, fixtures, machinery, equipment, inventory, material and supplies.

(b) Definitions.

(1) Economic Obsolescence. -- A loss in value of a property arising from "outside forces" such as changes in use, legislation that restricts or impairs property rights, or changes in supply and demand relationships.

(2) Functional Obsolescence. -- Loss of value due to an inability to perform adequately the function for which commercial and industrial personal property was designed.

(3) Physical Deterioration. -- A loss in value due to natural wear and tear of commercial and industrial personal property resulting from age, use, abuse, etc.

(c) Situs.

(1) The situs of commercial and industrial furniture, fixtures, machinery, equipment, inventory, material and supplies shall depend upon an analy-

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sis of the residence of the owner, and the location of the personal property and whether the personal property is subject to personal property taxation by another state and is taxed by the other state.

(2) All commercial and industrial personal property belonging to persons or corporations residing in this State, whether such property be in or out of the State shall be taxable, as personal property, unless the property be actually and permanently located in another state, and is subject to taxation as personal property and is actually taxed as personal property in the other state.

(3) All commercial and industrial personal property located within this State, though owned by persons or corporations residing in another state shall be taxable as personal property by this State.

(d) Valuation of Commercial and Industrial Personal Property.

(1) In determining an estimate of fair market value, three approaches to fair value will be considered and used where applicable: (A) cost,

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(B) income, and (C) market. (For appropriate definitions and discussion of these methods, see §§ 11.09(a)(3)(9) and 10, and 11.08 (c)(1)(A)(B) and (C).

(2) Correlation -- Once generated, the various estimates of value will be considered in arriving at a final value estimate. However, the income approach to value is generally considered inappropriate in determining fair market value estimates of personal property for franchised restaurants, governmental properties, hospitals, etc. In these cases, the cost and/or market approaches may be more suitable in estimating fair market value.

When possible, an audit appraisal method should be used, but because of the difficulty in obtaining necessary accounting data from the taxpayer, or due to the lack of comparable commercial and/or industrial personal properties, a physical appraisal method may be necessary.

(3) Adjustments -- When physically inspecting commercial and industrial personal property for appraisal, the local assessor should take into consideration three types of depreciation; physi-

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cal deterioration, economic obsolescence and functional obsolescence.

(4) Valuation of Common Commercial and Industrial Personal Property. --Frequently encountered

commercial and industrial personal properties common to numerous businesses within a taxing district shall be valued using current appraisal manuals furnished by the Tax Commissioner to local assessors. Some examples of such personal property are restaurant equipment, retail outlet equipment, and hotel and office furniture.

(5) Valuation of Specialized Industrial Equipment.

(A) Specialized industrial equipment must be valued using the most accurate information available from the taxpayer, e.g. original cost, date of acquisition, depreciation, salvage value, condition, etc. Comparable appraisals may be obtained from the Tax Commissioner, when actual cost information is not available.

(B) The Tax Commissioner will provide and periodically update lists of industrial machinery and equipment common to certain

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industrial enterprises. These lists will assist local assessors by familiarizing them with industrial processes, equipment terminology, and equipment values.

Section 11.11(a)

11.11. Valuation of Intangible Personal Property Including Stock, Accounts Receivable and Stock in Banks and Capital of Savings and Loan Associations.

(a) Scope. -- This regulation presecibes how the appraised value of Class I intangible personal property will be determined during the statewide reappraisal mandated by the West Virginia Constitution, article X, § 1b. This regulation does not define what property is subject to assessment for ad valorem property taxes. Second, this regulation does not prescribe how the appraised values determined under it will be adjusted on account of substitutions, accretions, improvements, additions, replacements, destructions, removals, casualties, acts of God, waste or any like occurrence.^{1e} Third, this regulation does not describe how the phase-in of increased valuation, if any, resulting from the first statewide reappraisal will apply to intangible personal property.^{2e} Fourth, this regulation does not prescribe when appraised values determined under it will first be used.^{2e}

¹W. Va. Code § 11-1A-14(b) requires the Tax Commissioner to propose a legislative rule covering this subject on or before September 1, 1984.

²W. Va. Code § 11-1A-22 relates to determination of the phase-in, application and limitations.

³W. Va. Code § 11-1A-14(c) prohibits use of the first statewide reappraisal until the Legislature directs their use.

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(b) Promulgation. -- This proposed regulation was filed in the State Register on September 1, 1983, as required by W. Va. Code § 11-1A-11. Subsequent to the public hearing and comment period, this regulation was amended and refiled in the State Register on November 18, 1983. A second public hearing on December 19, 1983, will precede its submission to the Legislature in January, 1984. This regulation will not take effect until after an act of the Legislature is passed authorizing its promulgation.

(c) Construction. -- This regulation shall be applied, and interpreted in case of any ambiguity, in conformity with the West Virginia Constitution, art. X, §§ 1, 1a and 1b, and the several provisions of the West Virginia Code relating to the definition and determination of appraised value for purposes of ad valorem property taxation. In no event shall this regulation be construed as requiring any property to be appraised in excess of its market value, or as subjecting to tax any property that is exempt from ad valorem property taxation under laws of the United State or this State.

(d) Property Subject to This Rule. -- All Class I intangible property subject to statewide reappraisal having a taxable situs in this State shall be valued in accordance with this rule. The term "Class I intangible property" means and includes only notes, bonds, bills and accounts

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receivable, stock and other similar intangible personal property: Provided, that it does not include:

- (1) Money and bank deposits which W. Va. Const. art. X, § 1a exempts from tax.
- (2) Bonds and other evidences of debt of this State, or of a political subdivision or authority thereof, which W. Va. Const. art. X, § 1 permits the Legislature to exempt from tax and which by law have been exempted from tax. See Appendix I for a list of statutes exempting these obligations and securities from tax.
- (3) Bonds and other evidences of debt which are direct obligations of the United States, or of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from ad valorem property taxation by the states and their political subdivisions.
- (4) Any other note, bond, bill, account receivable, stock or other evidence of debt that does not have a taxable situs in this State.
- (5) Shares of capital stock owned by residents of this State in corporations actually located in other states, and whose property is taxed by the

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laws of such other states, are exempt from tax under W. Va. Code § 11-5-1 (1961).

(6) Any share, portion or interest owned by any person in a company, whether incorporated or not, when the property, stock or capital thereof is assessed to such company, is exempt from tax under W. Va. Code § 11-5-6 (1933).

(e) Species of Class I Intangibles. -- The general species or subclassifications of Class I intangible personal property are as follows:

(1) Notes. -- The term "note" means and includes any writing signed by the maker, containing an unconditional promise to pay a sum certain in money, on demand or at a definite time. The note may be payable to a named person(s) or to bearer, and may be either negotiable or nonnegotiable. The term "note" does not include money, documents of title or investment securities. Notes subject to appraisal include the following:

- (A) Personal and business notes receivable.
- (B) Notes and evidences of debt whether secured or unsecured.
- (C) Mortgage notes receivable.
- (D) Notes of debt held by corporations which

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represent amounts due from subsidiary or affiliated corporations.

(E) Commercial paper and participation certificates, whether originally issued or resold.

(F) All loans and other receivables which are evidenced in writing by a note.

(2) Bonds and Debentures. -- The term "bond" means a certificate or evidence of debt on which the issuing company or governmental body promises to pay the bondholders a specified amount of interest for a specified length of time, and to repay the loan on the expiration date. In every case a bond represents debt. Commonly, bonds are secured by a mortgage or lien on specific property. Bonds subject to appraisal include the following:

(A) Bonds and debentures of both domestic and foreign corporations.

(B) Bonds and debentures of other states and their political subdivisions.

(C) Bonds of public housing authorities organized under the laws of other states.

(D) Bonds and other similar debt instruments

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which are obligations of nonexempt quasi governmental agencies, commercial banks or other mortgage lenders, even though such instruments may be guaranteed as to payment by the United States Government.

(E) Bonds and debentures issued by commercial banks or other financial institutions.

(3) Bills and Accounts Receivable. -- The term "bills and accounts receivable" embraces only contract obligations, express or implied, owing to a person on open account. West Virginia Pulp and Paper Company v. Karnes, 137 Va. 714, 120 S.E. 321 (1923). Bills and accounts receivable subject to appraisal includes the following:

(A) Trade accounts, trade acceptances, open book accounts and charge accounts acquired in connection with any trade or business.

(B) Revolving type charge accounts, even though interest may be required on the balance due.

(C) Credit balances (including credits resulting from "short sale" transactions) on accounts with investment brokers and security dealers.

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(D) Dealer reserves and finance reserves which are due from a person engaged in the business of banking.

(E) The total amount of periodic or progress billings (excluding retainage) to which a contractor is entitled under terms of contracts in progress.

(F) Accounts receivable of all persons and businesses whether operating on a cash basis or accrual basis for income tax purposes.

(G) Accounts receivable of professional associations and professional persons (doctors, dentists, attorneys, accountants, etc.) when such accounts represent amounts owing to them for professional services.

(H) Loans to affiliated companies and other intercompany receivables of corporations which are not evidenced by a note or similar instrument. See section 11.11(e)(1) for loans secured by a note.

(I) Accrued rent which is due and payable but not received on or before the valuation date.

(J) Royalties which are due but not received

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on or before valuation date.

(K) Receivables of banks under retail credit card plans.

(L) Accounts receivable which have a business, commercial or taxable situs in West Virginia, even through such accounts may be owned by a nonresident or foreign corporation. See section 11.11(g) for rule regarding situs.

(M) Loans and other receivables which are not evidenced by a note or similar instrument.

(4) Shares of Stock.

(A) Exemptions.

(1) W. Va. Code § 11-5-1 (1961) provides that "shares of capital stock owned by residents of this State in corporations actually located in other states, and whose property is taxed by the laws of such other state shall not be required to be listed for taxation."

(2) W. Va. Code § 11-5-6 (1933) provides that "[w]hen the property, stock or capital of any company, whether incorporated or not, is assessed to such

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company, no person owning any share, portion or interest therein shall be required to list the same or be assessed with the valuation thereof."

(3) Shares and units sold prior to the date of valuation are not subject to appraisal. However, if the proceeds from such sales are not received before the date of valuation, the person has an account receivable (credit balance) which is subject to appraisal.

(B) The term "stock" includes the following:

(1) Stock of both domestic and foreign corporations.

(2) Unregistered stock, restricted stock, letter stock and stock which is closely held and not traded on the market.

(3) Shares and units of ownership of mutual funds, investment trusts and investment funds, the value of which may not be reduced in whole or in part by reason of the nontaxable or exempt

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status of securities or obligations held in the fund or trust.

(4) Shares and units held in brokerage accounts, including those purchased on margin.

(5) Shares and units held or controlled, or both, by fiduciaries (executors, administrators, pension plans, guardians, etc.) which are reportable by the fiduciary.

(6) Shares of stock owned by corporations in affiliated or subsidiary corporations.

(7) Shares of stock in holding companies, including bank and insurance holding companies.

(8) Shares and units acquired through purchase, gift, inheritance or any other means as of the date of valuation, even if the certificates have not been received and are not in the owner's possession.

(9) Shares and units owned by or registered to residents of West Virginia as

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of the valuation date, even though such certificates may be physically located in another state.

(5) Other Similar Intangibles. -- The term "other similar intangible personal property" means any other evidence of indebtedness that is not a note, bond, bill and account receivable or stock. It includes the following:

- (A) Conditional sales contracts - written agreements whereby title to property sold remains with the seller until paid in full.
- (B) Investment contracts and accumulation plans.
- (C) Land sales contracts.
- (D) Repurchase agreements issued by financial institutions, notwithstanding that such may be secured by tax exempt government securities.

(f) Definitions. -- For the purpose of statewide reappraisal of property for ad valorem property taxes, the following terms shall have the meaning ascribed herein, unless the intention to give a more limited or broader meaning is disclosed by the context in which the term is

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used:

(1) "Bank deposits" means a deposit of money with any person engaged in the business of banking. It includes money on deposit in a checking, time, interest or savings account, and certificates of deposit (including money market certificates and All Savers Certificates). The term "person engaged in the business of banking" means and includes banks, building and loan associations, industrial banks, industrial loan companies, supervised lenders, credit unions and all other similar institutions, whether persons, firms or corporations, which are by law under the jurisdiction and supervision of the West Virginia Commissioner of Banking, the Federal Reserve Board or the United States Comptroller of the Currency.

(2) "Bills receivable" and "accounts receivable" mean debts owed to a person that arise in the normal course of business dealings and are not supported by negotiable paper.

1. Open account. -- Type of credit extended by a seller to buyer which permits buyer to make purchases without a note or security and it is based on an evaluation of the buyer's

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credit. Such account may be mutual, or provide open credit or open-end credit.

(2) Open Credit. -- Line of credit extended up to a certain amount by a merchant, bank or supplier so as to permit borrowings or purchases to such amount without posting security or reestablishing credit limit.

3. Open-end credit. -- Credit cards and "revolving charges" where one can pay a part of what he owes each month on several different purchases.

4. Trade acceptance. -- A trade acceptance means a draft drawn by a seller which is presented for signature (acceptance) to the buyer at the time goods are purchased and which then becomes the equivalent of a note receivable of the seller and the note payable of the buyer.

(3) "Bonds" includes annuity bonds, bearer bonds, callable bonds, chattel mortgage bonds, collateral trust bonds, convertible bonds, corporate bonds, coupon bonds, debenture bonds, general mortgage bonds, general obligation bonds, government bonds, guaranteed bonds, improvement bonds, income bonds, state bonds and subordinate bonds.

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(4) "Business situs" means the state where intangible personal property was acquired, used or otherwise has become localized in the conduct of a business activity so as to come within the protection of this State.

(5) "Cash" includes all United States and foreign currency and coin. Individual coin collections are treated as cash and exempt, unless the collection is being held or maintained for the purpose of future profit. In such case, the collection is valued as tangible personal property. Coin collections of dealers are considered to be inventory and are also valued as tangible personal property.

(6) "Commercial domicile" means the state or other location where a corporation or other business has established its principal office or chief place of business.

(7) "Credit card" means any instrument or device, whether known as a credit card, credit plate, or by any other name, issued with or without a fee by an issuer for the use of the cardholder in obtaining money, goods, services, or any other thing of value.

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(8) "Debenture" means a bond or promissory note backed by the general credit of a corporation and usually is not secured by a mortgage or lien on any specific property.

1. Convertible debenture. -- A debenture which may be changed or converted into some other security (e.g. stock) usually at the option of the holder.
2. Convertible subordinate debenture. -- A debenture which is subject or subordinate to prior payment of other indebtedness but which may be converted into another form of security.
3. Sinking fund debenture. -- A debenture which is secured by periodic payments into a sinking fund, commonly managed by a trustee for purposes of retiring such debt.
4. Subordinate debenture. -- A debenture which is subject to or subordinate to prior payment of other indebtedness.

(9) "Domestic corporation" means any corporation organized and chartered under the laws of West Virginia.

(10) "Evidence of debt" means a written instrument entered into by two or more parties whereby one

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party acknowledges in writing a debt of money as owning or payable to another party.

(11) "Foreign corporation" means any corporation organized and chartered under the laws of another state or foreign county.

(12) "Intangible personal property" or "intangible" property" means personal property which is not in itself valuable, but derives its value from that which it represents.

(13) "Letter of credit" means a letter whereby one person requires some other person to advance money or give credit to a third person, and promises to repay the same to the person making the advancement.

(14) "Money" means and includes cash, personal and business checks, cashiers' checks, certified checks, postal money orders, travelers' checks and express checks, bank credit card (Master Card, Visa, etc.) sales drafts or sales slips held by a merchant or other party for deposit with a bank, and other items commonly thought of and understood to be money. It does not include notes, bonds, bills and accounts receivable, stock and any other similar intangible personal property. See 48 Op.

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Att'y. Gen. 63 (1959); W. Va. Code §§ 11-5-3 (1961), defining "personal property," and 11-8-5 (1961), classifying property for ad valorem property taxation.

(15) "Note" includes circular notes (letters of credit), collateral notes, demand notes, installment notes, joint and several notes, joint notes, mortgage notes, negotiable notes, secured notes, time notes and unsecured notes.

(16) "Other similar intangible personal property" in the context of "notes, bonds, bills and accounts receivable, stock and any other similar intangible personal property" means and includes all other evidence of debt. See Greene Line Terminal Co. v. Martin, 122 W. Va. 483, 10 S.E.2d 901, 906 (1940).

(17) "Property situated in this State" means and includes:

(A) Property having legal situs in this State; or

(B) In the case of a person with a place of business located in this State and authorized to do business in this State and one or more other states of the United States or any

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foreign country:

(i) Any tangible property brought into this State from time to time or otherwise deemed to have situs in this State for purposes of ad valorem property taxation, and

(ii) Any intangible property held by such person, wherever evidenced thereof is situate. W. Va. Code § 11-1A-3(h).

(18) "Stock" means the capital or principal fund of a corporation or joint stock company derived from contributions of subscribers or the sale of shares. "Stock" is distinguishable from "bonds" and, ordinarily from "debentures," in that it gives the right of ownership in part of the assets of the corporation and the right to interest in any surplus after payment of debt. It includes the following: preferred stock, assessable stock, blue-chip stock, bonus stock, callable preferred stock, common stock, control stock, convertible stock, cumulative preferred stock, cumulative stock, donated stock, letter stock, listed stock, nonassessable stock, noncumulative preferred stock, noncumulative stock, nonvoting stock, no

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par stock, participation preferred stock, participation stock, par value stock, penny stock, premium stock, redeemable stock, registered stock, restricted stock, stock options, stock rights, stock warrants, treasury stock, unlisted stock and voting stock.

(18) "Taxable situs" means the state where intangible personal property is subject to taxation.

(19) "Value," "market value" and "true and actual value" mean the price at or for which a particular species of property would sell if it were sold to a willing buyer by a willing seller in an arms-length transaction without either the buyer or the seller being under any compulsion to buy or sell.

See W. Va. Code § 11-1A-3(i).

(g) Situs of Intangibles.

(1) In General. -- All intangible personal property owned by residents of West Virginia is generally considered to have a taxable situs in this State. In addition, intangible property acquired by a nonresident as a result of business activities conducted in West Virginia or otherwise having a business situs in this State, is also deemed to have a taxable situs in this State. The intent of

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this provision is to assure that nonresidents transacting business in this State and availing themselves of the laws of this State, either directly or through an agent, pay the same tax that would be imposed on residents in the same business.

(2) Considerations. -- Criteria applicable in determining whether intangible property has a tax situs in West Virginia includes the following:

(A) All intangible personal property owned by natural persons who are residents of West Virginia is considered to have a taxable situs in this State (regardless of where such intangible property was originally acquired or where it is currently physically located) unless the owner establishes that it has a tax situs in another state and that ad valorem property taxes are actually paid in that other state.

(B) All intangible property held or controlled by an administrator, executor, trustee, guardian, receiver or other fiduciary domiciled in this State is considered to have a taxable situs in this State (regardless of

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where such intangible property was originally acquired or where it is currently located) unless such person establishes that it has a tax situs in another state and that ad valorem property taxes are actually paid in that other state.

(C) All intangible personal property owned by a domestic corporation or by a foreign corporation having its commercial domicile in West Virginia, is considered to have a taxable situs in this State; Provided, that any intangible property of such corporations which (i) has acquired a business situs in another state, and (ii) is lawfully subjected to that state's intangible property tax is not subject to appraisal in West Virginia.

(D) In the case of a foreign corporation having its commercial domicile outside of West Virginia, any intangible personal property acquired in the conduct of business activities carried on in this State, or otherwise having a business situs in this State, is considered to have a taxable situs in West Virginia. Specifically, accounts re-

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ceivable, notes receivable and other evidences of debt of such foreign corporations doing business in West Virginia are considered to have a taxable situs in this State, regardless of where they were approved or evidence thereof is currently located if such debt or debts were created or acquired as a result of any one or more of the following:

- (i) The selling of property in West Virginia by an officer, employee or agent having or reporting to an office or other business location in this State.
- (ii) The delivery of property in West Virginia from a factory, warehouse or other stock of goods located in this State.
- (iii) Services performed in West Virginia by an officer, employee or agent having or reporting to an office or other business location in this State.
- (iv) The lending of money in West Virginia by an officer, employee or agent

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having or reporting to an office or
other business location in this State.

Stat (h) Valuation of Class I Intangibles. -- Class I
intangible personal property shall be valued in the follow-
ing manner in order to assure that the appraised value of
such property is determined in an "equal" and "uniform"
manner throughout this State.

(1) Notes.

(A) Valuation of notes unsecured by realty. --

The value of a note is presumed to be the
amount of the unpaid principal as of the
valuation date. The taxpayer may establish a
lesser value by submitting to the Tax Commis-
sioner satisfactory evidence that the note is
worth less than the unpaid amount because of
the debtor's insolvency or similar reason.

(B) Valuation of notes secured by realty. --

All notes for the payment of money which are
secured by a written lien upon West Virginia
real property shall be valued at the prin-
cipal amount of the indebtedness evidenced
by the note. The principal amount of in-
debtedness shall equal the amount of the loan
financed, including any miscellaneous charges

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included in the amount financed, but shall not include unearned and unaccrued interest over the term of the loan. Such value may be reduced if the taxpayer submits to the Tax Commissioner satisfactory evidence that the note's face value is not the market value of the note.

(C) Accrued interest. -- Any accrued interest due on a note that is not paid on or before the valuation date, shall be included when determining the appraised value of the note.

(D) Burden of proof. -- The burden of proof shall be on the person seeking a lower or higher value than that determined under the preceding paragraphs to show by cogent evidence that such value is not the market value of the note.

(2) Bonds and Debentures.

(A) The appraised value of bonds and debentures which are listed and traded on a security exchange is the closing price of such bonds and debentures as quoted by the exchange on the valuation date.

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(B) The appraised value of bonds and debentures traded over-the-counter is the closing bid price as quoted by the over-the-counter market on the valuation date.

(C) If bonds and debentures are not regularly traded and quoted values are not available, the appraised value is the amount of the unpaid principal or face amount of the bond or debenture, unless cogent evidence is furnished to prove that the actual value is different than that amount.

(D) Any accrued interest due on bonds and debentures should be included in determining their appraised value.

(E) The burden of proof shall be on the person seeking a lower or higher value than that determined under the preceding paragraphs to show by cogent evidence that such value is not the market value of the bond or debenture.

(F) When the valuation date is not a business day, then the closing price on the last business day preceding the valuation date shall be the appraised value.

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(F) The value of debt obligations of the State of West Virginia and its political subdivisions, the United States of America, and agencies of the State of West Virginia and the United States of America, shall be exempt from taxation, unless the issuing authority consents to the taxation of its obligations.

(3) Bills and Accounts Receivable.

(A) The appraised value of all accounts receivable is the face value of such receivables as reflected on the books and records of the owner.

(B) In determining the face value of accounts receivable, a reasonable deduction will be allowed for uncollectable accounts, provided such deduction is based on generally accepted accounting principles.

(C) The appraised value of any account receivable which is in dispute or which is due from a party whose solvency is doubtful shall be estimated at its probable value.

(D) Any accrued interest due on accounts receivable should be included in determining

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the appraised value of such receivables.

(E) The burden of proof shall be on the person seeking a lower or higher value than that determined under the preceding paragraphs to show by cogent evidence that such value is not the market value of the bill or account receivable.

(4) Shares of Stock. (Except bank stock.)

(A) The appraised value of stocks listed and traded on a stock exchange is the closing price of such stocks on the valuation date as quoted by the stock exchange.

(B) The appraised value of stocks traded over-the-counter is the closing "bid price" on the valuation date as quoted by over-the-counter security dealers.

(C) If stocks are not listed or regularly traded on the open market, the appraised value shall be appraised by determining an average (weighted by the volume of sales) between the highest and lowest prices in arms-length sales during a reasonable period before the valuation date.

(D) If the appraised value of stocks cannot

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be established by use of (A), (B) or (C) above, an appraised value should be determined in accordance with generally accepted appraisal principles, giving consideration to such factors as adjusted book value, corporate earnings, nature and history of the business, dividend record, and comparison with the market price of stocks of comparable businesses.

(E) Generally no reduction is allowed in determining the appraised value of shares of stock because they are unregistered or restricted as to right of sale. However, there may be situations where some discount should be allowed in order to determine the marked value of the stock. The burden of proof shall be on the owner or holder thereof to prove by cogent evidence that a discount should be allowed and what the amount thereof should be.

(F) The so-called "blockage rule" (a reduction in the value of shares of stock due to the number or volume of shares owned) will generally not be used in establishing ap-

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praisal value. However, there may be situations where some discount should be allowed in order to determine the market value of the stock. The burden of proof shall be on the owner or holder thereof to show by cogent evidence that a discount should be allowed and the amount of the discount.

(G) The appraised value of shares of stock will generally not be increased or decreased because such shares represent either a majority or minority interest. However, there may be situations where some discount should be allowed in order to determine the market value of the stock. The burden of proof shall be on the owner or holder thereof to prove by cogent evidence that a discount should be allowed and the amount of the discount.

(H) If listed market values or quotations are not used to compute the appraisal value of shares of stock, a statement should be attached to the property tax report explaining the method used in appraising or determining the appraised value of such stocks.

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(I) Indebtedness incurred to purchase shares of stock may not be considered as a deduction in determining the appraised value of such shares.

(J) The burden of proof shall be on the person seeking a lower or higher value than that determined under the preceding paragraphs to show by cogent evidence that such value is not the market value of the stock.

(5) Shares of Bank Stock.

(A) West Virginia Bank Stock. W. Va. Code § 11-3-14 (1933) requires that the value of shares of stock in a West Virginia banking institution, national banking association or industrial loan company shall be ascertained according to the best information which the appraiser may obtain. Valuation of such stock shall reflect consideration of the method set forth in § 11.11(h)(4), with the following exception:

(i) A proportionate share of the value of real estate owned by a West Virginia banking institution, national banking or industrial loan company shall be deducted

Section 11.11(h)

from the total value of the bank stock (determined before any decreasing modification is made). Real estate shall be valued in the same manner as other commercial real property.

(ii) In order to eliminate the direct or indirect effect which debt obligations of the United States that are exempt from property taxes have on the value of bank stock, a proportionate share of the value of such debt obligation of the United States, shall be deducted from the total value of the bank stock (determined before any decreasing modification is made).

(B) Out-of-State Bank Stock.

(1) Bank stock in banks, banking institutions and banking associations held by West Virginia residents representing ownership in banks located outside the State of West Virginia shall be valued in the same manner as stock held in West Virginia banks. See Section 11.11(h)(5)(A).

(2) Whenever the stock represents

Section 11.11(h)

ownership in banks located outside the State of West Virginia, and such stock is subject to intangible personal property tax by another state, with such taxes actually paid to such other state, the stock shall not be valued for taxation in this State.

- (6) Stock or Capital of West Virginia Building and Loan Associations and Savings and Loan Associations. -- W. Va. Code § 11-3-14a

(1959) requires that the capital of West Virginia building and loan and savings and loan associations, and federal savings and loan associations, as well as the capital of such associations located in other states, shall be valued in the same manner as out-of-state bank stock See Section 11.11(h)(5).

- (7) Other Similar Intangible Personal Property.

(A) The appraisal value of "other similar intangible personal property" for which specific valuation procedures are not provided shall be determined in accordance with generally accepted appraisal principles. Established market values shall be used for

Section 11.11(h)

intangible property regularly traded (e.g. stock, bonds etc.). Otherwise, factors customarily considered in determining intrinsic value shall be used.

(B) Burden of proof. -- The burden of proof shall be on the person seeking a lower or higher value than that determined under the preceding paragraph to show by cogent evidence that such value is not the market value of the property.

Section 11.12(a)

11.12. Valuation of Public Utility Property.

(a) General. -- These regulations establish general valuation methods for the appraisal of the various types 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.

(b) Definition.

(1) Bands of Investment Technique. -- A synthesis of capital components used in financing an investment.

(2) Capitalization Rate. -- A rate, used to convert an estimate of income to an estimate of market value.

(3) Cost Approach. -- 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 always be used to value public utility operating property, however, when such original cost is not available, replacement cost or reproduction cost may be considered.

(4) Economic Obsolescence. -- A loss in value of a property arising from factors such as changes

Section 11.12(b)

in use, legislation that restricts or impairs property rights, or changes in supply and demand relationships.

(5) Fair Market Value. -- The highest price in terms of more 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.

(6) Final Assessed Values. -- Values established by the Board of Public Works as required by W. Va. Code § 11-6-11.

(7) Functional Obsolescence. -- A loss in value of a property due to changes in style, taste, or technology.

(8) Income Approach. -- The appraisal process of discounting an estimate of future benefits into an expression of present worth.

(9) Market Data Approach. -- The appraisal process of examining sales data and translating such data into an estimate of present worth.

(10) Market Comparables Technique. -- A process of reviewing recently sold properties that are

Section 11.12(b)

similar in important respects to a subject property in order to arrive at an estimate of value.

(11) Original Cost. -- The initial cost paid for constructing or acquiring property.

(12) Physical Deterioration. -- A loss in value due to wear and tear in service.

(13) Public Service Corporation. -- Business entities contemplated by of W. Va. Code § 11-6-1 et. seq.

(14) Rate Base. -- That group of accounts or derivatives thereof, from the Uniform System of Accounts, on which a public utility is allowed a return on investment.

(15) Regulation. -- The process wherein fees charged for public utility services are reviewed by applicable federal and state regulatory bodies.

(16) Replacement Cost. -- 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.

(17) Reproduction Cost -- The cost, including material, labor, and overhead, that would be

Section 11.12(b)

incurred in constructing an improvement having exactly the same characteristics as the improvement in question.

(18) Return on Investment. -- A margin of profit generally expressed as a percentage of investment capital.

(19) Stock and Debt Technique. -- A process of reviewing market trading prices of securities in order to arrive at an estimate of value.

(20) Tentative Assessments. -- Property valuation estimates furnished by the Tax Commissioner to the Board of Public Works in accordance with W. Va. Code § 11-6-9.

(21) Uniform System of Accounts. -- The most current system of accounting developed and required by state and federal regulatory bodies.

(22) Unit Rule -- An appraisal of an integrated property as a whole without any reference to the values of its component parts.

(23) Operating Property. -- 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

Section 11.12(c)

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.

(c) Situs.

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

(2) When the income approach is used, the unit of value shall be allocated to the State of West Virginia using gross operating plant data after which

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

Section 11.12(d)

(d) Valuation of Operating Public Utility Property.

(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.

(2) Generally Accepted Appraisal Methods. -- In determining tentative assessments the Tax Commissioner will consider, and use where applicable, three 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.

(A) Cost Approach. -- Recognizing that public service corporations are predominantly cost regulated, when the cost approach is used in the valuation process, original cost less applicable depreciation will be employed. In applying the cost approach, the Tax Commis-

Section 11.12(d)

sioner will consider three types of depreciation; (a) physical deterioration, (b) functional obsolescence, and (c) economic obsolescence.

(B) 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, 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.

(C) 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

Section 11.12(d)

stocks and bonds that enable reasonable valuation estimates to be made.

(D) Correlation. -- 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.

(3) Classifications of Public utility and Common Carrier Operating Properties.

(A) 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.

(B) 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

Section 11.12(d)

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.

(C) 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.

(D) 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

Section 11.12(d)

of Accounts prescribed for Telephone Utilities shall be used.

(E) 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 for Wire-Telegraph and Ocean-Cable Carriers shall be used.

(F) Airline Companies. -- Operating property for air carriers shall primarily include such properties as are considered as operating property by the Civil Aeronautics Board (CAB). 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.

(G) Interstate Motor Carriers. -- Operating property for interstate motor carriers shall primarily include such properties as are

Section 11.12(d)

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.

(H) Interstate Railroads. -- Operating property for interstate railroads 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 Railroad Companies shall be used.

(I) Intrastate Railroads. -- Operating property for intrastate railroads shall primarily include such properties as are considered by the West Virginia Public Service Commission (PSC) as operating property. In determining which properties are properly

Section 11.12(d)

included as operating property, the most recent Uniform System of Accounts for Railroad Companies as prescribed by the Interstate Commerce Commission shall be used.

(J) 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.

(K) 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

Section 11.12(d)

for Class A and B, and Class C and D water utilities.

(L) 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.

(M) Carline Companies. -- Operating property for carline companies shall include consideration of Rolling Stock used in transportation of freight or passengers.

(N) 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

Section 11.12(d)

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.

(0) 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.

Section 11.13(a)

11.13. Valuation of Vehicles, Watercraft and
 Aircraft.

(a) General. -- This regulation provides the absolute methodology for valuing all vehicles, watercraft and aircraft.

(b) Definitions.

(1) Vehicles. -- The term "vehicle" shall include, but is not limited to, automobiles, trucks, truck tractors, trailers, motor homes, campers, motorcycles, motorbikes and mopeds.

(2) Assessment Day. -- The term "assessment day" means the first day of July of each assessment year for ad valorem property tax purposes.

(c) Valuation of Automobiles.

(1) The Tax Commissioner shall merge a computer listing of all passenger automobiles registered in the State of West Virginia by owner of record on the assessment day of each year, with a computer tape listing the values of all vehicles as reflected by a current National Automobile Dealers' Association (NADA) appraisal guide. The result of this program will be a list of motor vehicle owners on assessment day for each county, together

Section 11.13(d)

with the motor vehicles they own, and an exact appraised value for each motor vehicle. This appraised value will be the base retail value as listed by the NADA appraisal guide.

(2) The county assessor shall review the annual appraisal list of motor vehicles. When a motor vehicle which is subject to assessment has been omitted from the appraisal list, the assessor shall use the current NADA appraisal guide furnished by the Tax Commissioner for the month of July of the current assessment year to ascertain the base retail value of the vehicle.

(3) Vehicle models over eighteen years old which are not covered by NADA appraisal guides shall be valued by the assessor in the following manner:

(A) Vehicles displaying "antique auto" license plates shall be individually appraised using the best information available.

(B) All other vehicles over eighteen years old will be valued at a standard value of \$200.

(d) Valuation of Trucks, Recreational Vehicles, Motorcycles, Mopeds and Other Vehicles.

(1) The local assessor shall use a current ap-

Section 11.13(e)

praisal guide published by NADA, or other recognized authority, and furnished by the Tax Commissioner for the month of July of the current assessment year to ascertain the base retail value of such vehicles.

(2) Older vehicle models in this classification which are excluded from recognized appraisal guides because of their age, shall have their last appraised value depreciated by ten percent (10%) per year until the value reaches two hundred dollars (\$200). Thereafter, the appraised value will remain constant for so long as the vehicle is owned by the taxpayer.

(e) Valuation of Watercraft. -- The Tax Commissioner shall annually purchase a nationally recognized comprehensive price listing service for watercraft such as power boats, bass boats, canoes, row boats, pontoon boats, cabin cruisers, etc. The Tax Commissioner shall supply this listing to each county assessor beginning July 1, 1985, for use in determining the appraised value of watercraft.

(f) Valuation of Airplanes.

(1) The Tax Commissioner shall purchase and furnish to county assessors an aircraft appraisal guide from a nationally recognized authority. The

Section 11.13(f)

Tax Commissioner shall supply this listing to each county assessor beginning July 1, 1985, for use in determining the appraised value of the aircraft.

(2) The local assessors shall determine the appraised value of special radio equipment and radar and other avionic equipment purchased and installed in the aircraft. The total appraised value of the aircraft shall be determined based on the retail value of both the aircraft and its navigational equipment.

Section 11.14(a)

11.14. Taxpayer Returns.

(a) The Tax Commissioner shall print taxpayer return forms. Such forms shall be furnished to each assessor who will distribute said forms to taxpayers for completion and return.

(b) 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.

(c) Taxpayers reporting coal, oil, natural gas, timber, and other natural resources, properties, and all banks and savings and loan associations shall prepare property tax returns in duplicate. One copy shall be filed with the assessor of the county wherein the property lies; the other copy shall be filed with the State Tax Commissioner, P. O. Drawer 2389, State Capitol, Charleston, West Virginia 25305.

(e) All other taxpayers shall prepare one copy of appropriate property tax returns and file it with the assessor of the county wherein the real property lies, or where the taxpayer lives when reporting personal property.

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

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(g) All other property appraisal returns required by this rule shall be filed no later than November 1st of each year.

(h) The Tax Commissioner, for good cause shown, may grant an extension of filing deadlines. No assessor may grant such an extension of a deadline.

Appendix A

Section 11.05(e)

Working Interest

.0--.750 ADP Category

	Deemed Average Daily Production (ADP)	Working Interest ADP	Annual Gross Income	Operating Expenses	Net Income	Capitalization Rate Present Worth of 1 Factor	Discounted Net Income
Year 1	.750	.656	\$5,388	\$3,600	\$1,788	.933	\$1,668
Year 2	.698	.611	5,018	3,600	1,418	.811	1,150
Year 3	.649	.568	4,665	3,600	1,065	.705	751
Year 4	.604	.529	4,345	3,600	745	.613	457
Year 5	.562	.492	4,041	3,600	441	.533	235
Year 6	.523	.458	3,762	3,600	162	.464	75
							\$4,336

Total Discounted
Net Income

$$\frac{\$4,336 \text{ (Total Discounted Net Income)}}{.656 \text{ (Year 1: Working Interest ADP)}} = \$6,610 \text{ (Multiplier for Working Interest)}$$

Appendix B

Section 11.05(c)

Royalty Interest

.0-.750 ADP Category

	Deemed Average Daily Production (ADP)	Royalty Interest ADP	Income	Capitalization Rate Present Worth of 1 Factor	Discounted Income
Year 1	.750	.094	\$772	.933	\$720
Year 2	.698	.087	714	.811	579
Year 3	.649	.081	665	.705	469
Year 4	.604	.076	624	.613	383
Year 5	.562	.070	575	.533	306
Year 6	.523	.065	534	.464	248

\$2,705

Total Discounted Income

$$\begin{aligned} & \$2,705 \text{ (Total Discounted Income)} \\ & \times .094 \text{ (Year 1: Royalty Interest ADP)} \\ & = \$28,777 \text{ (Multiplier for Royalty Interest)} \end{aligned}$$

Appendix C

Working Interest

	Total Production	Working Interest Production	Gross Income	Operating Expenses	Net Income	Capitalization Rate Present Worth of 1 Factor	Discounted Net Income
Year 1	6,000	5,250	\$13,650	\$3,000	\$10,650	.933	\$ 9,936
Year 2	5,580	4,883	12,696	3,000	9,696	.811	7,863
Year 3	5,189	4,540	11,804	3,000	8,804	.705	6,207
Year 4	4,826	4,223	10,980	3,000	7,980	.613	4,892
Year 5	4,488	3,927	10,210	3,000	7,210	.533	3,843
Year 6	4,174	3,652	9,495	3,000	6,495	.464	3,014
Year 7	3,882	3,397	8,832	3,000	5,832	.403	2,350
Year 8	3,610	3,159	8,213	3,000	5,213	.351	1,830
Year 9	3,357	2,937	7,636	3,000	4,636	.305	1,414
Year 10	3,122	2,732	7,103	3,000	4,103	.265	1,087
Year 11	2,903	2,540	6,604	3,000	3,604	.231	833
Year 12	2,700	2,363	6,144	3,000	3,144	.200	629
Year 13	2,511	2,197	5,712	3,000	2,712	.174	472
Year 14	2,335	2,043	5,312	3,000	2,312	.152	351
Year 15	2,172	1,901	4,943	3,000	1,943	.132	256
Year 16	2,020	1,768	4,597	3,000	1,597	.115	184
Year 17	1,879	1,644	4,274	3,000	1,274	.100	127
Year 18	1,747	1,529	3,975	3,000	975	.087	85
Year 19	1,625	1,422	3,697	3,000	697	.075	52
Year 20	1,511	1,322	3,437	3,000	437	.066	29
Year 21	1,405	1,229	3,195	3,000	195	.057	11
Year 22	1,309	1,145	2,977	3,000		.057	0
							\$45,465
							Total Discounted Net Income

\$45,465 (Total Discounted Income)

\$13,650 (Year 1: Working Interest Production)

= 3.331 (Multiplier for Working Interest)

Appendix D

Royalty Interest

	Total Production	Royalty Interest Production	Income	Capitalization Rate Present Worth of 1 Factor	Discounted Income
Year 1	6,000	750	\$1,950	.933	\$1,819
Year 2	5,580	697	1,812	.811	1,470
Year 3	5,189	649	1,687	.705	1,189
Year 4	4,826	603	1,568	.613	961
Year 5	4,488	561	1,459	.533	778
Year 6	4,174	522	1,357	.464	630
Year 7	3,882	485	1,261	.403	508
Year 8	3,610	451	1,173	.351	412
Year 9	3,357	420	1,092	.305	333
Year 10	3,122	390	1,014	.265	269
Year 11	2,903	363	944	.231	218
Year 12	2,700	337	876	.200	175
Year 13	2,511	314	816	.174	142
Year 14	2,335	292	759	.152	115
Year 15	2,172	271	705	.132	93
Year 16	2,020	252	655	.115	75
Year 17	1,879	235	611	.100	61
Year 18	1,747	218	567	.087	49
Year 19	1,625	203	528	.075	40
Year 20	1,511	189	491	.066	32
Year 21	1,405	176	458	.057	26
Year 22	1,309				0
					\$9,395

Total Discounted
Income

$$\begin{aligned} & \$9,395 \text{ (Total Discounted Income)} \\ & \underline{\$1,950 \text{ (Year 1: Royalty Interest Production)}} = 4.818 \text{ (Multiplier for Royalty Interest)} \end{aligned}$$

APPENDIX ~~K~~ F

West Virginia Code Provisions
Exempting Government
Obligations and Securities
from Property Taxes

The following is a list of forty-six statutes which exempt specific bond issues from ad valorem property taxation.

- 5-6-8 Bonds issued by the State Building Commission for the purpose of financing the acquisition of land, construction, equipping and furnishing of a building or buildings, together with incidental approaches, structures and facilities.
- 7-3-7 Bonds issued by county courts to acquire real estate for, construct, equip, furnish and maintain a courthouse, hospital, or other public building or jail or regional correction center.
- 7-3-14 Revenue bonds issued by county courts to own, equip, furnish, operate, lease, improve and extend a public hospital, clinic, long-term care facility and other related facilities.
- 7-11-2 Bond notes, debentures, and other evidences of indebtedness of any parks and recreation commission created by a county commission.
- 7-12-10 Bonds, notes, debentures, and other evidence of indebtedness of county development authorities.
- 7-15-13 Evidences of indebtedness of county authorities.
- 8-16-11 Revenue bonds of municipal public works or boards issued for the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, maintenance, repair (including replacements) and operation of jails, jail facilities, municipal buildings, police stations, fire stations, li-

braries, museums, other public buildings, incinerator plants, land fill or other garbage disposal systems, hospitals, piers, docks, terminals, airports, drainage systems, flood control systems, flood walls, culverts, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), public markets, cemeteries, motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other facilities deemed necessary, appropriate useful, convenient or incidental to the regulation, control and parking of motor vehicles), stadiums, gymnasiums, sports arenas, auditoriums, public recreation centers, public recreation parks, swimming pools, roller skating rinks, ice skating rinks, tennis courts, golf courses, polo grounds, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, widening or otherwise improving of any street, avenue, road, alley or way, or the building or renewing of sidewalks.

8-19-4 Revenue bonds issued by a municipality for the acquisition, construction, improvement or maintenance of a public waterworks system.

8-20-5 Revenue bonds issued by a municipality to acquire, construct, establish, equip, repair, maintain and operate a combined waterworks and sewerage system.

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- 8-27-20 Revenue bonds and other evidences of indebtedness of municipal and/or county urban mass transportation system authorities.
- 8-29-13 Bonds, notes, debentures and other evidences of indebtedness of regional airport development authorities.
- 8-29A-13 Bonds, notes, debentures and other evidences of indebtedness of county airport authorities.
- 8-33-7 Bonds, notes, debentures and other evidences of indebtedness of municipal, county, and municipal county building commissions.
- 10-2A-10 Revenue bonds issued by county courts, municipal corporations or county boards of education to establish, construct, acquire, extend, equip and own, maintain and operate athletic fields of all types, stadiums, gymnasiums, field houses, and all other types of athletic establishments.
- 11-3-9 Bonds and other evidences of indebtedness sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings used exclusively for divine worship, or for the purpose of paying indebtedness thereon.
- 13-1-33 Bonds issued by the State of West Virginia or any political subdivision thereof for the purpose of acquiring, constructing and erecting, enlarging,

extending, reconstructing, improving or furnishing any building, library, museum, buildings for educational purposes, recreational parks, civic arenas, auditoriums, exhibition halls, theaters and colleges.

13-2-8 Refunding bonds issued by county courts, municipal corporations, or boards of education.

13-2A-10 Refunding bonds issued by any city, town, county, public service agencies, boards, commissions or departments having power to issue revenue obligations for the purpose of refinancing any work, undertaking, or project which the public body is or may hereafter be authorized to construct and from which the public body has heretofore derived or may thereafter derive revenues, including all improvements, betterments, extensions and replacements thereto, and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto.

13-2C-15 Revenue bonds issued by counties or municipalities to defray the cost of acquisition by construction, purchase, lease or otherwise an industrial or commercial development project including any buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in

land, water rights, franchises, machinery, equipment, furnishings, landscaping, utilities, railroad spurs and sidings, parking facilities, parking wharfs, approaches and roadways or any number or combination of the foregoing necessary or desirable in connection therewith or incidental thereto and includes, without limiting the generality of the foregoing, hotels and motels and related facilities, nursing homes and other health care facilities, facilities for participatory or spectator sports, conventions or trade show facilities, airport facilities, shopping centers, office buildings, residential real property for family units, mass commuting facilities, and any site, structure, building, industrial park, water dock, wharf or port facilities, fixtures, machinery, equipment and related facility, including real and personal property, or any combination thereof, suitable as a factory, mill or shop, or processing, assembly, manufacturing or fabricating project, or warehouse or distribution facility, or facilities for the extraction, production or distribution of mineral resources and related facilities, or sewage or solid waste disposal facilities, or facilities for the local furnishing of electric energy or gas, or facilities for the furnishing of

water, if available on reasonable demand to members of the general public or storage or training facilities related to any of the foregoing, or research or development facility or pollution abatement or control facility and includes the reconstruction, modernization and modification of any existing industrial project for the abatement or control of industrial pollution.

13-2D-12 Any revenue bond issued by a county court to acquire, construct, equip, improve, maintain or operate a public facility for the taking off and landing of airplanes, and all such appurtenances and facilities usual and convenient in connection with such facility.

13-2E-12 Any refunding bond issued by any city, town, village, county, public service district, sanitary district, political subdivision or any other similar public entity now or hereafter created, and the State of West Virginia acting through any of its agencies, boards, commissions or departments to finance any work, undertaking, or project which the public body is or may hereafter be authorized to acquire or construct and from which the public body has heretofore derived or may hereafter derive revenues, for the refinancing of which enterprise refunding bonds are issued under

this article, and such enterprise shall include all improvements, betterments, extensions and replacements thereto, and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto.

- 15-6-18 Revenue bonds issued by the State Armory Board for the acquisition, construction and maintenance of armories, arsenals, ranges, campgrounds, service centers, training areas, concentration areas, and warehouses used for the training, administration, operations, and maintenance of the national guard.
- 16-13-10 Revenue bonds issued by a municipality or sanitary district for the acquisition, construction and maintenance of public sewage collection and treatment systems.
- 16-13-22f Refunding bonds issued by municipalities or sanitary districts to pay or discharge its outstanding revenue bonds.
- 16-13A-21 Bonds issued by public service districts for the acquisition, construction and maintenance of public service properties providing water or sewerage services.
- 16-15-14 Bonds issued by a county or municipal housing authority for demolition and slum clearance, the

acquisition, repair and/or construction of low cost housing, stores, offices and community facilities.

- 16-18-10 Bonds and refunding bonds issued by the state or any political subdivision thereof for the purpose of acquiring slum or blighted areas and redeveloping them.
- 16-26-10 Revenue bonds issued by the West Virginia Solid Waste Disposal Authority for the purpose of reconstruction, enlargement, improvement, furnishing and equipping a solid waste disposal project.
- 17-16A-14 Revenue bonds issued by the West Virginia Turnpike Commission to finance construction of any express highway or turnpike.
- 17-17-19 Revenue bonds issued by the West Virginia Commission of Highways for corporations formed to acquire, construct, and maintain bridges.
- 18-11-25 Bonds issued by the West Virginia Board of Regents for the construction of parking facilities at West Virginia University.
- 18-11A-7 Bonds issued by the West Virginia University Board of Governors for capital improvements at West Virginia University.
- 18-11B-11 Revenue bonds, revenue refunding bonds and bonds issued for combined purposes, issued by the West Virginia University Board of Governors for university facilities, buildings and structures.

- 18-12A-7 Revenue bonds issued by the West Virginia Board of Regents for capital improvements at Marshall University.
- 18-12B-4 Revenue bonds, revenue refunding bonds and bonds issued for combined purposes issued by the West Virginia Board of Regents for capital improvements on a system basis at state institutions of higher learning.
- 18-23-16 Bonds issued by governing boards of West Virginia's institutions of higher education to provide, construct, erect, improve, equip, maintain, and operate gymnasiums, stadia, dormitories, homes, refectories, swimming pools, or such other structures or buildings for students, teachers, officers and employees at the various state institutions of higher education.
- 18-24-6 Bonds issued by the West Virginia Board of Regents for the acquisition, construction, maintenance, improvement and furnishing of student union buildings.
- 18-27-22 Income only from bonds issued by the Board of Regents to fund education loan financing programs.
- 20-4-5 Revenue bonds issued by the Director of the Department of Natural Resources to acquire funds to develop the state park and recreation system.

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- 20-5C-17 Revenue and refunding bonds issued by the West Virginia Water Development Authority to acquire or construct any public water or waste water facility.
- 29-8-10 Revenue bonds issued by the Blennerhassett Historical Park Commission to develop Blennerhassett Island and related locations in Wood County into a major educational, cultural and recreational attraction.
- 29-18-19 Revenue or refunding bonds issued by the West Virginia Railroad maintenance authority to finance railroad maintenance projects.
- 31-15-20 Bonds issued by the West Virginia Economic Development Authority to establish or improve an industrial subdivision project.
- 31-18-18 Bonds issued by the West Virginia Housing Development Fund for the purpose of financing land development and residential housing.
- 31-19-20 Bonds issued by the West Virginia Community Development Authority for the purpose of raising revenue to purchase the bonds of local government units.

KEN RECHLER
Secretary of State

MARY P. RATLIFF
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STATE OF WEST VIRGINIA
SECRETARY OF STATE
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Director, Corporation

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

TO: John Montgomery - Tax
FROM: RICH O. HARTMAN, DIR. ADMIN. LAW DIV.
DATE: June 28, 1988

*check file folders
Lisa was unsure
about them*

THE ATTACHED RULE(S) RECENTLY FILED BY YOUR AGENCY HAVE BEEN ENTERED INTO THE COMPUTER. PLEASE REVIEW AND PROOF AND RETURN WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS PLEASE SIGN THIS MEMO AND RETURN TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF YOUR RULE(S) FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

Series 1

THE ATTACHED RULE(S) HAVE BEEN REVIEWED AND ARE CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

THE ATTACHED RULE(S) HAVE BEEN REVIEWED AND NEEDS CORRECTED. THESE CORRECTIONS HAVE BEEN MARKED.

SIGNED: John Montgomery

TITLE OF PERSON SIGNING: Sen. Tech. Atty

DATE: 9-15-88

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX DEPARTMENT
LEGISLATIVE

Chapter 11-1A
Series 1A
(1984)

Subject: Appraisal of Property for Periodic Statewide
Reappraisals for Ad Valorem Property Tax Purposes.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 3/13/84
Administrative Law Division

Effective date: April 12, 1984

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

LEGISLATIVE

Chapter 11-1A
Series 1A
(1984)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 9/13/84
Administrative Law Division

Subject: Appraisal of Property for Periodic Statewide
Reappraisals for Ad Valorem Property Tax Purposes.

Section 1. General.

1.01. Type of Regulations. -- These regulations are a "legislative rule" as defined in W. Va. Code § 29A-1-2(d) (1982).

1.02. Scope. -- These regulations clarify and implement state law as it relates to the appraisal at market value of certain species of real and personal property under W. Va. Code § 11-1A-1 et seq.

1.03. Authority. -- These regulations are issued under the authority of W. Va. Code § 11-1A-1(f), § 11-1A-11 (1983), and § 64-2-11(1a)(11) (1984).

1.04. Filing Date. -- These legislative regulations were originally filed as proposed legislative regulations in the Secretary of State's Office on September 1, 1983, and a public hearing was held on October 5, 1983. They were revised and again filed on November 18, 1983. Public hearings were held in seven locations around the

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State on December 19, 1983. The proposed regulations were approved by the Tax Commissioner and filed in the State Register on January 5, 1984. They were amended as required by W. Va. Code § 64-2-11(1a)(11) (1984) and filed in the State Register on March 13, 1984.

1.05. Effective Date. -- These regulations become effective on April 12, 1984.

1.06. Citation. -- These regulations may be cited as: W. Va. Leg. Reg. 11-1A, Series 1A § _____, page _____ (1984).

Sections 2 through 10 are reserved.

Section 11. Valuation of Certain Classes or Species of Property.

11.01. Background.

(a) By September 1, 1983, the Tax Commissioner was required to propose a legislative rule for submission to the Legislature in accordance with W. Va. Code § 29A-3-1 et seq., describing in detail the methods whereby the market value (appraised value) of all real and personal property except residential and farm surface real property, will be determined during the first statewide reappraisal. W. Va. Code § 11-1A-11.

(b) This proposed rule was originally filed on September 1, 1983, and a public hearing was convened on October 5, 1983. Subsequent to the public hearing and comment period, this rule was amended and refiled in the State Register on November 18, 1983. A second public hearing was held on December 19, 1983. This proposed legislative rule was approved by the Tax Commissioner and filed in the State Register on January 5, 1984. This rule will not take effect until after an act of the Legislature is passed authorizing its promulgation.

(c) On March 10, 1984, the Legislature approved Com. Sub. for Senate Bill No. 425, making it effective from passage. That bill enacted W. Va. Code § 64-2-11(1a)(11) authorizing

The State Tax Commissioner to promulgate the proposed legislative rule filed in the State Register on January 5, 1984, after making certain amendments specified in W. Va. Code § 64-2-11(1a)(11) (1984). Those amendments having been made, this legislative rule was again filed in the State Register on March 13, 1984. As provided in W. Va. Code § 29A-3-13(b) (1983) they take effect on April 12, 1984.

11.02. Scope, Use of Rule and Construction.

(a) Scope. -- This rule prescribes how the appraised value of all species of property except residential and farm surface real property will be determined during the statewide reappraisal mandated by the West Virginia Constitution, article X, § 1b. This rule does not define what property is subject to assessment for ad valorem property taxes. Second, this rule does not prescribe how the appraised values determined under it will be adjusted on account of substitutions, accretions, improvements, additions, replacements, destructions, removals, casualties, acts of God, waste or any like occurrence.¹ Third, this rule does not describe how the phase-in of increased valuation, if any, resulting from the first statewide reappraisal will apply to real and personal property.² Fourth, this rule does not prescribe when appraised values determined under it will first be used.³

(b) Use of Rule. -- This rule shall be followed by all persons valuing property for purposes of the statewide reappraisal in all counties in which such property is located or has a tax situs. This is necessary in order to

¹W. Va. Code § 11-1A-14(b) requires the Tax Commissioner to propose a legislative rule covering this subject on or before September 1, 1984.

²W. Va. Code § 11-1A-22 relates to determination of the phase-in, application and limitations.

³W. Va. Code § 11-1A-14(c) prohibits use of the first statewide reappraisal until the Legislature directs their use.

meet the requirement in W. Va. Const. art. X, §§ 1 and 1b, that ad valorem property taxes be equal and uniform throughout the State. Consequently, once this rule is finally promulgated it shall be binding upon the Tax Commissioner and his employees, county assessors and their employees, county commissions sitting as boards of equalization and review and administrative appraisal review boards and the Board of Public Works, until amended or repealed by the Tax Commissioner in the manner prescribed by law, or abrogated by statutory amendment, or decision of the West Virginia Supreme Court of Appeals. See W. Va. Code § 11-1A-24 (1983). The objective of these regulations is the appraisal of all real and personal property at "market value."

(c) Construction. -- This rule shall be applied, and interpreted in case of any ambiguity, in conformity with the West Virginia Constitution, art. X, §§ 1, 1a and 1b, and the several provisions of the West Virginia Code relating to the definition and determination of appraised value for purposes of ad valorem property taxation. In no event shall this rule be construed as requiring any property to be appraised in excess of its market value, or as subjecting to tax any property that is exempt from ad valorem property taxation under laws of the United States or this State.

11.03. Annual Updating. -- This rule shall be reviewed annually and amended as necessary in accordance with provisions and requirements of W. Va. Code § 29A-3-1 et seq., in order to properly reflect any future changes in statutory or case law, to clarify application(s) of existing laws or legislative regulations and to amend policies and procedures of the State Tax Department adopted by procedural or interpretive regulations to implement such laws or regulations. Whenever this rule requires the Tax Commissioner to annually determine factors such as capitalization rates, royalty rates multipliers, stumpage price, etc., notice of his determinations shall be given to the public by filing notice thereof in the State Register; and by sending a copy of the notice to each assessor.

11.04. Valuation of Active and Reserve Coal Properties.

(a) General. -- Coal is one of the several estates in real property which may be owned either as a separate interest or in conjunction with other interests, usually as fee ownership or as mineral ownership. If coal is owned as a separate estate, either absolute or as a leasehold interest, West Virginia property tax law requires such ownership to be listed, valued and taxed based on its true and actual value. Coal may be owned without being mined. Coal rights may exist where no coal is actually present, or where the coal is unmineable or mined out. For valuation purposes this regulation classifies coal property ownership into the following categories:

- (1) Active
- (2) Active reserves
- (3) Inactive reserves
- (4) Mined-out/Unmineable/Barren

(b) Definitions.

- (1) Acres Mined. -- Acres mined per year is the average annual production as defined in 11.04(b)(4) divided by the product of the thickness (in feet) of the coal seam being mined as detailed in mining permit reports times 1800 tons per acre

foot times the recovery rate according to the actual recovery of coal per acre being experienced at the mining operation.

(2) Active Mining Property. -- This term refers to a mineable and merchantable seam of coal on a parcel involved in a mining operation. For the purposes of determining active mining property, contiguous parcels under one ownership or owned or leased by inter-related businesses or individuals shall be treated as one parcel. The maximum active mining portion for each seam for each mining operation on a parcel is fifteen (15) years times the acres mined [as defined in § 11-04(b)(1)] for deep mines or ten (10) years times the acres mined for surface and auger mines. If the mineable and merchantable acreage remaining in the seam(s) being mined is less than the maximum amounts listed above, then the remaining acreage will be considered the active mining property. If more than one seam on a parcel is being actively mined, then each such seam represents separate active mining property. In the application of the herein provided valuation formula on "active mining property," the appropriate formula cal-

valuation will be based upon the actual market to which the coal from the tract and seam is currently being sold, whether it is "metallurgical" or "steam."

If more than one mining operation is mining a given coal seam on the same parcel, then each such mining operation has a separate active mining property. However, under no circumstances shall the sum of the active acres for all mining operations on a seam exceed the number of acres on a parcel. As necessary, the Commissioner shall apportion the number of acres for each mining operation, based upon a review of relevant leases, and the respective rates of average annual production.

(3) Active Reserves. -- This term means and includes the entire residual acreage of mineable and merchantable coal for each seam being actively mined in excess of the active mining property; or the number of acres corresponding to twenty-five (25) years times the acres mined per year [§ 11.04(b)(1)], whichever is less. In the application of the herein provided valuation formula on "active reserves," the appropriate formula calculation will be based upon the actual market

to which the coal from that tract and seam is currently being sold, whether it is "metallurgical" or "steam."

(4) Average Annual Production. -- The average annual rate of coal production, in tons per fiscal year, ending June 30th of each calendar year, is generally determined by a weighted average of three (3) years net production.

The weighted average shall be determined by multiplying the most recent year's production by .4, the previous two (2) years production multiplied by .3, and the resulting three (3) figures added together to arrive at the average annual production. However, if there is no production during the most recent fiscal year then the property will be valued as inactive reserves.

When there has been no production during the second or third most recent fiscal year, the production for the current year will be factored by .5 and the production for the earlier fiscal year in which production existed will be factored by .5 and the resulting two figures will be added together to arrive at the average annual production.

If there was no production in both the second

and third most recent fiscal years then the production for the most recent fiscal year will be factored by 1.0 and the resulting figure will be the average annual production.

(5) Barren. -- Those properties where coal rights are separately and/or individually owned, and the existence of one or more coal seams has not been established.

(6) Capitalization Rate. -- A rate used to convert an estimate of income into an estimate of market value. [For further explanation see § 11.04(a)(1)(C).]

(7) Inactive Reserves. -- Inactive reserves are those seams of coal, or portions thereof, which are mineable and merchantable but are not active mining property, or active reserves.

(8) Life of Mining Operation. -- The life of a deep mining operation shall be fifteen (15) years, or the number of years required to exhaust the seam at the average annual production [§ 11.04(b)(4)] rate, whichever is less. The life of a surface or auger mining operation shall be ten (10) years, or the number of years required to exhaust the seam at the average annual production rate, whichever

is less. Fractional years will be rounded to nearest whole number.

(9) Merchantable Coal. -- Coal which is ordinarily used for sale and can usually be sold at a profit.

(10) Metallurgical Coal. -- This term shall mean bituminous coal that is suitable for making coke by industries that refine, smelt, and work with iron and/or steel.

(11) Mineable Coal. -- Coal which can be mined under present day mining technology and economics.

(12) Mined-Out. -- A seam of coal, or any portion thereof, which is depleted by prior mining operations and which is not mineable and merchantable by modern technology.

(13) Mining Operation. -- This term shall mean an enterprise engaged in actively obtaining or preparing to obtain coal or its by-products from the earth's crust, including underground, surface and auger mines. Each mining operation may have more than one area designated as "Active Mining Property" as defined in Section 11.04(b)(2). The designation of "Active Mining Property" areas shall be determined as follows:

reserves.

(1) Region 1 - Brooke, Harrison, Marion, Marshall, Monongalia and Ohio Counties.

(2) Region 2 (No present mining) - Cabell, Calhoun, Doddridge, Hancock, Pocahontas, Putnam, Roane, Tyler, Wetzel, and Wirt Counties and the northwest portion of Kanawha County (Jefferson, Union, Poca Districts that lie north of Elk River).

(3) Region 3 - Barbour, Grant, Mineral, Preston, Randolph, Taylor, Tucker and Upshur Counties.

(4) Region 4 - Braxton, Clay, Gilmer, Greenbrier, Lewis, Mason, Nicholas and Webster Counties.

(5) Region 5 - Boone, Fayette, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne and Wyoming Counties and the southeast portion of Kanawha County (Washington, Malden, Loudon, Cabin Creek Districts, and part of Big Sandy and Elk Districts which lie south of Elk River).

Of the remaining eleven (11) counties two (2), Jefferson and Hardy, have been classified as non-coal and the other nine (9) Berkeley, Morgan, Hampshire, Pendleton, Monroe, Jackson, Wood, Ritchie, and Pleasants are listed as containing thin, unmineable seams.

If under any circumstances, the coal in any of the eleven (11) counties listed above becomes mineable and merchantable, that county will be classified in the appropriate region.

(D) Multiple Seam Parcels. -- For parcels containing more than one mineable, merchantable seam, the inactive portion of the seam(s) being mined are assigned 100% of the value determined by the method summarized in § 11.04(c)(3). The remaining unmined, inactive seams shall then be ranked according to their mineable, merchantable acreages. The largest seam and the second largest seam are each assigned 100% of the value determined by the method summarized in § 11.04(c)(3). The third largest unmined, inactive seam is

Section 11.04(c)

valued at 75% of the amount as determined by the methods summarized in § 11.04(c)(3). Subsequent seams are each valued at 50% of the amount determined by the method summarized in § 11.04(c)(3). The final valuation of inactive reserves on a parcel is the sum of each of the individual valuations.

(4) Valuation of Mined-Out/Unmineable/Barren Coal Properties. -- Properties in this category shall be valued at \$1.00 per surface acre.

(5) Summary of Valuation Methods.

(A) Each seam on those properties with mineable and merchantable coal shall be valued as follows.

Active Mining Property

(Average Annual Production)	X	(Royalty Rate Per Ton)	X	(Multiplier)	=	(Active Coal Real Property Value)
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Active Reserve Property

(Active Reserves)	X	(Per Acre Value of Active Mining Property)	X 10%	=	(Active Reserve Coal Real Property Value)
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Inactive Reserve Property

(Total Inactive Reserve Acres)	X	(Regional Per Acre Inactive Reserves Value)	=	(Inactive Coal Reserves Real Property Value)
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(B) Mined-out, unmineable and barren coal

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properties shall be valued at One Dollar (\$1.00) per surface acre.

(C) The total value for coal properties will be the sum of the value of active mining property, active reserves, the inactive reserves and the mined-out, unmineable and barren acres.

(D) If other real property interests are owned in the coal property acreage, then the value of those additional interests shall be added to the total value of the coal properties to arrive at the total real property value.

(6) Leasehold Interests. -- These regulations generally attribute the value of coal to the owner of the coal property. In those circumstances, however, where the owner of the property is subject to a lease requiring the owner to permit mining at royalty rates substantially below current market values, the owner may petition the Assessor, and on appeal, the Tax Commissioner, to attribute a portion of the value of the coal determined by this formula to the leaseholder.

11.05 Valuation of Producing and Reserve Oil Properties.

(a) General. -- Oil is one of the several estates in real property which may be owned either as a separate estates in real property or in conjunction with other interests, usually as fee ownership, oil and gas ownership or as minerals ownership. If oil is owned as a separate estate, West Virginia property tax law requires such ownership to be listed, valued and taxed based on its true and actual value. If the interest in oil is part of a larger interest in a tract of property, the value of the oil interest shall be included in the value of the larger interest. Oil may be owned without being produced. Oil rights may exist where no oil is actually present, or where the oil is unproducable or depleted.

(b) Annual Reports. -- The Tax Commissioner will publish an annual report for the variables to be considered in arriving at the value of the specific oil-related property. These reports when required by the regulation will be published, subjected to comment and take effect upon the schedule set out in this section. All such reports must be published on or before the 30th day of April preceding the assessment date, followed by a thirty day period for written public comment. The Tax Commissioner will review the com-

ments and present the final values of the variables to be used in the assessment year on or before July 1 of each calendar year. These final values will be posted in the county assessors office and the State Register.

(c) Categories for Valuing Oil Bearing Properties. --

Parcels of property thought to bear oil or having the oil mineral interest separated from the fee of the property will be classified as oil producing property, assigned oil reserves or unassigned oil reserves.

(d) Definitions.

(1) "Oil producing property" means property from which oil is being produced or extracted. Oil producing property is limited to the interest or interests underlying an area of up to 40 acres of surface per well with one or more active well(s) on the parcel.

(2) "Assigned oil reserve property" means properties in an area of potential production, as determined by the Tax Department, but from which there has been no past production of oil, or the part of a parcel from which there has been past or current production that lies outside an oil producing property, or the 40 acres of surface per well of oil producing property if the well is

shut-in for the entire year.

(3) "Unassigned oil reserve property" means properties outside of the area of potential production, as determined by the Tax Department, in which the oil mineral interest has been conveyed separately from the rest of the property, or the 40 acres of surface per well of oil producing property if the well has been plugged and abandoned as required by Article 4, Chapter 22 of the West Virginia Code [W. Va. Code § 22-4-1 et seq. (1981)].

(4) "Working interest" means the fractional interest in oil production subject to operating expenses and owned by the leasehold or operator. Owner operated wells are to be valued using the working interest formula.

(5) "Royalty interest" means the fractional interest in oil production not subject to operating expenses and retained by the oil rights owner or lessor. Overriding royalty interests not incurring operating expenses are treated entirely as royalty interest.

(6) "Flush production" means the production of oil from any well on a producing oil property

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whose initial production date is two years or less prior to the date of valuation.

(7) "Settled production" means the production of oil from all wells on an oil producing property whose initial production date is more than two years prior to the date of valuation.

(8) "Personal property" used in oil production means machinery and equipment in and about the well and all other tangible personal property used in producing oil from the well. It shall not include vehicles or other tangible personal property not permanently used in production.

(9) "Operator" means any person or persons, corporation, partnership, adventure or other enterprise which proposes to or does locate, drill, manage or abandon any well.

(e) Methods of Valuation.

(1) General. -- For oil producing property, its value shall be determined by (1) a formula which applies a multiplier to the average daily production of the well(s) for working interest and royalty interest property, plus (2) a value attributable to the personal property used in production per well times the number of producing wells

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on the property for working interest property. Where ownership is split through a lease or royalty arrangement, different multipliers will be used for the working interest and the royalty interest. Each term in this computation is discussed below.

(2) Average Daily Production. -- The average daily production of an oil well is its production rate, measured in terms of oil field standard 42 gallon barrels, for the year preceding the annual tax assessment date, divided by the number of full or partial days of well production. Partial days shall include time allowed for oil to collect between pumpings. Full or partial days shall not include time when well non-production results from workover, redrilling, or well maintenance.

(3) Percentage Interest in the Oil. -- Where the ownership of oil in place is divided through a lease or other arrangement, the compensation to the owner of the property is derived by designating a percentage of the production to be the royalty payment to the owner. The remainder is the working interest. The Tax Commissioner will annually determine an assumed standard working and royalty percentage interest through a review of

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oil and gas leases from throughout the State. The royalty and working interest are used in the method described in the regulations for determination of the formulas to be used to appraise oil producing properties.

(4) Average Industry Market Price. -- The Tax Commissioner will annually derive the average industry market price by reviewing the price paid per barrel by the major West Virginia crude oil purchasers. The Tax Commissioner's annual report on the average industry market price should reflect a reduction for average Federal Windfall Profits Tax and West Virginia Business and Occupation Taxes deemed to be paid by the working or royalty interests in the production. The average industry market price will be used in the method described in the regulations for determination of the formulas to be used to appraise oil producing properties.

(5) Average Industry Operating Expense. -- The Tax Commissioner will annually determine the average industry operating expense per well and publish that expense in an annual report. The average industry operating expenses per well will

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be used in the method described in the regulations for determination of the formulas to be used to appraise oil producing properties.

(6) Capitalization Rate. -- A capitalization rate will be developed considering the three components set out in § 11.05(e)(6)(B). This rate will be used to select the factor(s) from a standard mid-year life present worth of one table using a compound interest premise. (See § 11.05(e)(10) for an example.) Below is a listing of terms and definitions employed in developing this capitalization rate.

(A) Definitions.

(i) Bands of Investment Discount Component. -- A discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing.

(ii) Discount Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to the aggregate of the anticipated return-on-investment over the economic life of an

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investment.

- (iii) Management Rate. -- A rate reflecting a return to an investor for the management of similar investment portfolios.
- (iv) Market Comparison Discount. -- A discount rate derived by dividing income net of the recapture component and property taxes by the arms-length selling price of the property.
- (v) Non-liquidity Rate. -- A rate reflecting a return to an investor representing the loss of interest on an investment arising from the time required to sell the investment.
- (vi) Property Tax Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the economic life of an investment.
- (vii) Recapture Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to his investment.

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(viii) Risk Rate. -- A rate reflecting a return to an investor necessary to attract capital to an investment containing a possible loss of principal and/or interest.

(ix) Safe Rate. -- A rate reflecting a return to a investor on an investment which has little, if any, likelihood of loss of principal or anticipated return on investment.

(x) Summation Discount Component. -- A discount rate expressed as the aggregate of a safe rate, risk rate, non-liquidity rate, and management rate.

(B) Discussion. -- The capitalization rate will be determined annually by the Tax Commissioner through the use of generally accepted methods for estimating such rates. The rate so developed will assume a declining-terminal income series which is indicative of oil producing properties. The capitalization rate used to value oil properties will be developed considering (1) a discount rate determined primarily by the summation technique,

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(2) a recapture component, and (3) a property tax component.

(1) Discount Component

(i) Summation Technique -- The summation technique will be given primary consideration in the valuation of oil producing property. The summation technique will determine a discount component which will be used to calculate the present value of the future income of the oil producing property utilizing the following four (4) major sub-components:

- (1) Safe Rate
- (2) Risk Rate
- (3) Non-liquidity Rate
- (4) Management Rate

The "Safe Rate" will be developed through review of quarterly interest rates offered on thirteen (13) week United States Treasury Bills for a period of three (3) years prior to the appraisal date.

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The "Risk Rate" will be developed through review of data resulting from an annual survey of lending institutions, such survey reflecting interest rates required on loans for acquisition and/or development of oil producing properties. This survey will be conducted for a three (3) year period prior to the appraisal date. Results of the survey will be compared to quarterly interest rates offered on thirteen (13) week United States Treasury Bills for the same three (3) year period. An interest differential will then be selected representing the "Risk Rate." The "Non-liquidity Rate" will be developed through an annual survey to determine a reasonable estimate of time that oil properties remain on the market before being sold. The market time thus determined will be used to identify

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United States Treasury Bills with similar time differentials in excess of thirteen (13) week Treasury Bills. The interest differential between these securities will be deemed to be representative of the "Non-liquidity Rate." The "Management Rate" will be developed through a survey of investment firms to identify charges for the management of investment portfolios.

(ii) Bands-of-Investment/Market Comparison. -- Data permitting, the bands-of-investment and market comparison techniques will be used to verify the summation discount component.

(2) Recapture Component -- Selection of a multiplier will be accomplished through access of a standard mid-year life present worth of one table premised on a compound interest rate. This table has a factor for recapture built into the

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table coefficients. Inclusion of a recapture component in the capitalization rate is therefore not appropriate.

(3) Property Tax Component -- This component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class III property.

(7) Deemed Average Daily Production Rate. -- For the purpose of determining multipliers for wells of different productive capacities, wells will be divided into three classifications. Those classifications will be:

- (a) .0 through .750 barrels of average daily production.
- (b) .751 through 2.000 barrels of average daily production.
- (c) Greater than 2.000 barrels of average daily production.

For the sole purpose of calculating the multiplier applicable to each classification of production, all wells within each classification will be deemed to have the same rate of production and those rates are as follows:

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	<u>Classification</u>	<u>Deemed ADP Rate</u>
(a)	.0 - .750 ADP	.750 ADP
(b)	.751 - 2.000 ADP	1.500 ADP
(c)	2.000+	4.000 ADP

(8) Average Industry Production Decline Rate. --

The Tax Commissioner will annually derive the average production decline rate by a review of well production records located at the West Virginia Department of Mines, Office of Oil and Gas and data provided by companies and individuals. The Tax Commissioner will annually publish a report on the result of this review. The average production decline rate will be used in conjunction with the deemed average daily production rate for calculation of multipliers for the various production classifications.

(9) Multipliers. -- The multiplier serves to combine mathematically the effects of the deemed average daily production rate, average industry market price of oil, average industry well operating expense, working and royalty interest, flush and settled production, average production decline rate and a capitalization rate. [See § 11.05(e)(10)]
This multiplier will not be constant for all oil produc-

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ing properties. Each category defined below will have a separate multiplier and the procedure and results of these income analyses will be published in an annual report by the Tax Commissioner. The multipliers are to be used for oil producing properties.

Separate multipliers shall be derived for each of the following twelve (12) categories:

- (A) Working interest in settled production for average daily production between 0 and .750 barrels per day of oil.
- (B) Working interest in settled production for average daily production of between .751 and 2.000 barrels per day.
- (C) Working interest in settled production for average daily production of more than 2.000 barrels per day.
- (D) Working interest in flush production for average daily production of between 0 and .750 barrels per day.
- (E) Working in flush production for average daily production of between .751 and 2.000 barrels per day.
- (F) Working interest in flush production for

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average daily production of over 2.000 barrels per day.

(G) Royalty interest in settled production for average daily production between 0 and .750 barrels per day.

(H) Royalty interest in settled production for average daily production between .751 and 2.000 barrels per day.

(I) Royalty interest in settled production for average daily production in excess of 2.000 barrels per day.

(J) Royalty interest in flush production for average daily production between 0 and .750 barrels per day.

(K) Royalty interest in flush production of average daily production of between .751 and 2.000 barrels per day.

(L) Royalty interest in flush production for average daily production of 2.000 barrels per day.

(10) EXAMPLE:

The multipliers for each category will be determined as shown in this example. The numbers used in this example are not the result of any actual survey, although they may approximate or duplicate the results of such surveys. This example assumes that the necessary annual surveys have been performed with the results as follows:

Average Daily Production (ADP) Rate = .75 barrel

Working Interest = 7/8 of production

Royalty Interest = 1/8 of production

Average Industry Market Price = \$22.50/barrel

Average Industry Operating Expense = \$3,600/year

Capitalization Rate = 15%

Average Industry Decline Rate = 7% Per Year
for Settled Production

Gross Income = Percentage Interest ADP x 365
x \$22.50

Net Income = Gross Income - Operating Expenses

Working Interest

.0--.750 ADP Category

	Deemed Average Daily Production(ADP)	Working Interest ADP	Annual Gross Income	Operating Expenses	Net Income	Capitalization Rate Present Worth of 1 Factor	Discounted Net Income
Line 1	.750	.656	\$5,388	\$3,600	\$1,788	.933	\$1,668
Line 2	.698	.611	5,018	3,600	1,418	.811	1,150
Line 3	.649	.568	4,665	3,600	1,065	.705	751
Line 4	.604	.529	4,345	3,600	745	.613	457
Line 5	.562	.492	4,041	3,600	441	.533	235
Line 6	.523	.458	3,762	3,600	162	.464	75
							<u>\$4,336</u>

Total Discounted
Net Income

$$\frac{\$4,336 \text{ (Total Discounted Net Income)}}{.656 \text{ (Year 1: Working Interest ADP)}} = \$6,610 \text{ (Multiplier for Working Interest)}$$

Royalty Interest

.0--.750 ADP Category

	Deemed Average Daily Production(ADP)	Royalty Interest ADP	Income	Capitalization Rate Present Worth of 1 Factor	Discounted Income
Year 1	.750	.094	\$772	.933	\$720
Year 2	.698	.087	714	.811	579
Year 3	.649	.081	665	.705	469
Year 4	.604	.076	624	.613	383
Year 5	.562	.070	575	.533	306
Year 6	.523	.065	534	.464	248
					<u>\$2,705</u>

Total Discounted Income

$$\begin{array}{rcl}
 \$2,705 \text{ (Total Discounted Income)} & & \\
 \underline{.094 \text{ (Year 1: Royalty Interest ADP)}} & = & \$28,777 \text{ (Multiplier for Royalty Interest)}
 \end{array}$$

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(11) Personal Property Used in Oil Production. --

The Tax Commissioner will annually derive and publish a report of the average value of the personal property used in oil production. The Tax Commissioner will review the comments on the report and present the value for the personal property used in oil production. This value will be multiplied by the number of producing and shut-in wells on the property to determine the overall value of personal property used in oil production.

(f) Summary of Method of Valuing Oil Producing Property. -- Each active oil property in West Vir-

ginia will be valued in the following way:

Working Interest

$$1. \quad \begin{array}{l} \text{(Working Interest} \\ \text{Average Daily} \\ \text{Production)} \end{array} \quad \times \quad \begin{array}{l} \text{(Multiplier)} \end{array} \quad = \quad \begin{array}{l} \text{(Value of Oil} \\ \text{Producing Property)} \end{array}$$

PLUS

$$2. \quad \begin{array}{l} \text{(Value for Personal} \\ \text{Property Used in} \\ \text{Oil Production)} \end{array} \quad \times \quad \begin{array}{l} \text{(Number of Wells)} \end{array} \quad = \quad \begin{array}{l} \text{(Total Value of} \\ \text{Personal Property} \\ \text{Used in Oil Production)} \end{array}$$

Royalty Interest

$$1. \quad \begin{array}{l} \text{(Royalty Interest} \\ \text{Average Daily} \\ \text{Production)} \end{array} \quad \times \quad \begin{array}{l} \text{(Multiplier)} \end{array} \quad = \quad \begin{array}{l} \text{(Value of Oil} \\ \text{Producing Property)} \end{array}$$

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(g) Valuation of Assigned Reserves. -- The value per acre of assigned reserves shall be equal the annual lease payment per acre times the multiplier.

A valuation schedule for assigned oil reserve properties will be determined annually by the Tax Commissioner on a regional basis. The Tax Commissioner will annually conduct a review of oil agreements transacted at arms length in all fifty-five counties to determine the annual lease payment per acre, as well as the lease term. The Tax Commissioner will also conduct a review of non-dry completions in all 55 counties as reported to the West Virginia Department of Mines, Office of Oil and Gas. The assigned reserve multiplier is the sum of the projected annual income stream during the lease term discounted in each year by a capitalization rate. The regions, the annual lease payment per acre, lease term, and multiplier will be published annually in a report by the Tax Commissioner. The Tax Commissioner will review the public comments on the report and present the valuation determination for assigned oil reserve property.

(h) Valuation of Unassigned Oil Reserves. -- Unassigned Reserves will be valued at the nominal rate of \$1.00 per acre. Unassigned reserves will be properties outside of the area of potential production as determined by the Tax

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Commissioner. The Tax Commissioner will annually publish a report of the regions which are classified as unassigned oil reserves.

(i) Valuation of Wells that Produce Both Oil and Gas. -- The valuation of these producing wells shall be determined by use of the methods described in § 11.05 for oil and § 11.06 for gas excluding the value for personal property used in both methods. These values, including the value of personal property, shall then be summed to result in the overall value of the oil and gas producing acreage.

The Tax Commissioner will annually derive and publish a report of the average value of the personal property used in oil and gas production. This value will be multiplied by the number of producing and shut-in wells on the property to determine the overall value of personal property used in oil and natural gas production.

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11.06 Valuation of Producing and Reserve Natural
Gas Properties.

(a) General. -- Natural gas is one of the several estates in real property which may be owned either as a separate interest or in conjunction with other interests, usually as fee ownership, oil and natural gas ownership or as minerals ownership. If natural gas is owned as a separate estate, West Virginia property tax law requires such ownership to be listed, valued and taxed based on its true and actual value. If the interest in natural gas is part of a larger interest in a tract of property, the value of the natural gas interest shall be included in the value of the larger interest. Natural gas may be owned without being produced. Natural gas rights may exist where no natural gas is actually present, or where the natural gas is unproducible or depleted.

(b) Annual Reports. -- The Tax Commissioner will publish an annual report for the variables to be considered in arriving at the value of the specific natural gas related property. These reports when required by the regulation will be published, subjected to comment and take effect upon the schedule set out in this section. All such reports must be published on or before the 30th day of April preceding the assessment date, followed by a thirty day period for

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written public comment. The Tax Commissioner will review the comments and present the final value of the variables to be used in the assessment year on or before July 1 of each calendar year. These final values will be posted in the county assessor's office and the State Register.

(c) Categories for Valuing Natural Gas Bearing Properties. -- Parcels of property thought to bear natural gas or having the natural gas mineral interest separated from the fee of the property will be classified as natural gas producing property, assigned natural gas reserves or unassigned natural gas reserves.

(d) Definitions.

(1) "Natural gas producing property" means the property from which natural gas is being produced or extracted. Natural gas producing property is limited to the interest or interests underlying an area of 125 acres of surface per well with active wells on the parcel.

(2) "Assigned natural gas reserve property" means properties in an area of potential production, as determined by the Tax Department, but from which there has been no past production of natural gas, or the part of a parcel from which there has been past or current production that lies outside a

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natural gas producing property, or the 125 acres of surface per well of natural gas producing property if the well is shut-in for the entire year.

(3) "Unassigned natural gas reserve property" means properties outside of the area of potential production, as determined by the Tax Department, in which the natural gas mineral interest has been severed from the rest of the property, or the 125 acres of surface per well of natural gas producing property if the well has been plugged and abandoned as required by Article 4, Chapter 22 of the West Virginia Code [W. Va. Code § 22-4-1 et seq. (1981)].

(4) "Working interest" means the fractional interest in natural gas production subject to operating expenses and owned by the leasehold or operator. Owner operated wells are to be valued using the working interest formula.

(5) "Royalty interest" means the fractional interest in natural gas production not subject to operating expenses and retained by the natural gas rights owner or lessor. Overriding royalty interests not incurring operating expenses will be treated entirely as a royalty interest.

(6) "Flush production" means the production of

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gas from any well on a natural gas producing property whose initial production date is two years or less prior to the date of valuation.

(7) "Settled production" means the production of gas from all wells on a natural gas producing property whose initial production date is more than two years prior to the date of valuation.

(8) "Personal property" used in natural gas production means machinery and equipment in and about the well and all other tangible personal property used in producing gas from the well. It shall not include vehicles or other tangible personal property not permanently used in production.

(9) "Operator" means any person or persons, corporation, partnership, adventure or other enterprise which proposes to or does locate, drill, manage or abandon any well.

(e) Methods of Valuation.

(1) General. -- For natural gas producing property, its value shall be determined by (1) a formula which applies a multiplier to the quantity of the gross receipts minus the royalties paid for the working interest or a multiplier times the

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gross royalty receipts for the royalty interest; plus (2) a value attributable to the personal property used in production per well times the number of producing wells on the property when valuing working interests. Where ownership is split through a lease or royalty arrangement, different multipliers will be used for the working interest and the royalty interest. Each term in this computation is discussed below.

(2) Percentage Interest in the Natural Gas. --

Where the ownership of natural gas in place is divided through a lease or other arrangement, the compensation to the owner of the property is derived by designating a percentage of the production to be the royalty payment to the owner. The remainder is the working interest. The Tax Commissioner will annually determine an assumed average working and royalty percentage interest through a review of oil and gas leases from throughout the State.

(3) Average Industry Market Price. -- The Tax Commissioner will annually derive and report the average industry market price by reviewing the price paid per MCF by the major West Virginia

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natural gas purchasers. The average industry market price will be used in the method described in the regulations for determination of the formulas to be used to appraise natural gas producing properties.

(4) Average Industry Operating Expense. -- The Tax Commissioner will annually determine and report the average industry operating expense per well. The average industry operating expenses per well will be used in the method described in the regulations for determination of the formulas to be used to appraise natural gas producing properties.

(5) Average Production Rate. -- The Tax Commissioner will annually determine and report the production rate of natural gas wells through review of information filed with the West Virginia Department of Mines, Office of Oil and Gas. The production rate will be used in the method described in the regulations for the determination of the formulas to be used to appraise natural gas producing properties.

(6) Average Industry Production Decline Rate. -- The Tax Commissioner will annually derive and

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report the average industry production decline rate by a review of well production records located at the West Virginia Department of Mines, Office of Oil and Gas and data provided by companies and individuals. The average industry production decline rate will be used in the method described in the regulations for determination of the formulas to be used to appraise natural gas producing properties.

(7) Capitalization Rate. -- A capitalization rate will be developed considering the three components set out in § 11.06(e)(7)(B). This rate will be used to select the factor(s) from a standard mid-year life present worth of one table using a compound interest premise. (See § 11.06(e)(9) for an example.) Below is a listing of terms and definitions employed in developing this capitalization rate.

(A) Definitions.

(i) Bands of Investment Discount Component. -- A discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing.

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- (ii) Discount Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to the aggregate of the anticipated return-on-investment over the economic life of an investment.
- (iii) Management Rate. -- A rate reflecting a return to an investor for the management of similar investment portfolios.
- (iv) Market Comparison Discount -- A discount rate derived by dividing income net of the recapture component and property taxes by the arms-length selling price of the property.
- (v) Non-liquidity Rate. -- A rate reflecting a return to an investor representing the loss of interest on an investment arising from the time required to sell the investment.
- (vi) Property Tax Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the economic

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life of an investment.

(vii) Recapture Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to his investment.

(viii) Risk Rate. -- A rate reflecting a return to an investor necessary to attract capital to an investment containing a possible loss of principal and/or interest.

(ix) Safe Rate. -- A rate reflecting a return to a investor on an investment which has little, if any, livelihood of loss of principal or anticipated return on investment.

(x) Summation Discount Component. -- A discount rate expressed as the aggregate of a safe rate, risk rate, non-liquidity rate and management rate.

(B) Discussion. -- The capitalization rate will be determined annually by the Tax Commissioner through the use of generally accepted methods for estimating such rates. The rate so developed will consider a

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declining-terminal income series which is indicative of natural gas producing properties. The capitalization rate used to value natural gas properties will be developed considering (1) a discount component determined primarily by the summation technique, (2) a recapture component, and (3) a property tax component.

(1) Discount Component

(i) Summation Technique -- The summation technique will be given primary consideration in the valuation of natural gas producing property. The summation technique will determine a discount component which will be used to calculate the present value of the future income of the natural gas producing property utilizing the following four (4) major sub-components:

- (1) Safe Rate
- (2) Risk Rate
- (3) Non-liquidity Rate
- (4) Management Rate

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The "Safe Rate" will be developed through review of quarterly interest rates offered on thirteen (13) week United States Treasury Bills for a period of three (3) years prior to the appraisal date. The "Risk Rate" will be developed through review of data resulting from an annual survey of lending institutions, such survey reflecting interest rates required on loans for acquisition and/or development of natural gas producing properties. This survey will be conducted for a three (3) year period prior to the appraisal date. Results of the survey will be compared to quarterly interest rates offered on thirteen (13) week United States Treasury Bills for the same three (3) year period. An interest differential will then be selected representing the "Risk Rate." The "Non-liquidity Rate"

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will be developed through an annual survey to determine a reasonable estimate of time that natural gas properties remain on the market before being sold. The market time thus determined will be used to identify United States Treasury Bills with similar time differentials in excess of thirteen (13) week Treasury Bills. The interest differential between these securities will be deemed to be representative of the "Non-liquidity Rate." The "Management Rate" will be developed through a survey of investment firms to identify charges for the management of investment portfolios.

- (iii) Bands-of-Investment/Market Comparison. -- Data permitting, the bands-of-investment and market comparison techniques will be used to verify the summation discount component.

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(2) Recapture Component -- Selection of a multiplier will be accomplished through access of a standard mid-year life present worth of one table premised on a compound interest rate. This table has a factor for recapture built into the table coefficients. Inclusion of a recapture component in the capitalization rate is therefore not appropriate.

(3) Property Tax Component -- This component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class III property.

(8) Multipliers. -- The multiplier combines mathematically the effects of average industry market price of natural gas, average industry well operating expenses, working and royalty interest, average production rate, average production decline rate, flush and settled production and a capitalization rate. [See § 11.06(e)(9)] This multiplier will not be constant for all natural gas producing properties. Each category defined below will have a separate multiplier. The multi-

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plier will be derived by conducting an income analysis of a typical West Virginia well based on the aforementioned variables and published in an annual report.

Separate multipliers shall be established by the Tax Commissioner for the following four (4) categories:

- (1) Working interest in settled production.
- (2) Working interest in flush production.
- (3) Royalty interest in settled production.
- (4) Royalty interest in flush production.

(9) EXAMPLE:

The income analysis chart will be in the following forms. The figures used in these charts are hypothetical values of what may be derived from the annual reports and are not to be considered actual figures, although they may approximate or duplicate the results of actual annual reports.

Variables

Annual Industry Production Rate = 6000 MCF

Working Interest = 7/8 of production

Royalty Interest = 1/8 of production

Average Industry Market Price = 2.60/MCF

Average Industry Operating Expenses = \$3000

Average Industry Production Decline Rate = 7%

Capitalization Rate = 15%

Gross Income = Working interest production
x \$2.60

Net Income = Gross Income - Operating
Expenses

Working Interest

	Total Production	Working Interest Production	Gross Income	Operating Expenses	Net Income	Capitalization Rate Present Worth of 1 Factor	Discounted Net Income
ar 1	6,000	5,250	\$13,650	\$3,000	\$10,650	.933	\$ 9,936
ar 2	5,580	4,883	12,696	3,000	9,696	.811	7,863
ar 3	5,189	4,540	11,804	3,000	8,804	.705	6,207
ar 4	4,826	4,223	10,980	3,000	7,980	.613	4,892
ar 5	4,488	3,927	10,210	3,000	7,210	.533	3,843
ar 6	4,174	3,652	9,495	3,000	6,495	.464	3,014
ar 7	3,882	3,397	8,832	3,000	5,832	.403	2,350
ar 8	3,610	3,159	8,213	3,000	5,213	.351	1,830
ar 9	3,357	2,937	7,636	3,000	4,636	.305	1,414
ar 10	3,122	2,732	7,103	3,000	4,103	.265	1,087
ar 11	2,903	2,540	6,604	3,000	3,604	.231	833
ar 12	2,700	2,363	6,144	3,000	3,144	.200	629
ar 13	2,511	2,197	5,712	3,000	2,712	.174	472
ar 14	2,335	2,043	5,312	3,000	2,312	.152	351
ar 15	2,172	1,901	4,943	3,000	1,943	.132	256
ar 16	2,020	1,768	4,597	3,000	1,597	.115	184
ar 17	1,879	1,644	4,274	3,000	1,274	.100	127
ar 18	1,747	1,529	3,975	3,000	975	.087	85
ar 19	1,625	1,422	3,697	3,000	697	.075	52
ar 20	1,511	1,322	3,437	3,000	437	.066	29
ar 21	1,405	1,229	3,195	3,000	195	.057	11
ar 22	1,309	1,145	2,977	3,000	0	.057	0
							\$45,465
							Total Discounted Net Income

$$\frac{\$45,465 \text{ (Total Discounted Income)}}{\$13,650 \text{ (Year 1: Working Interest Production)}} = 3.331 \text{ (Multiplier for Working Interest)}$$

Royalty Interest

	Total Production	Royalty Interest Production	Royalty Interest Income	Capitalization Rate Present Worth of 1 Factor	Discounted Income
Year 1	6,000	750	\$1,950	.933	\$1,819
Year 2	5,580	697	1,812	.811	1,470
Year 3	5,189	649	1,687	.705	1,189
Year 4	4,826	603	1,568	.613	961
Year 5	4,488	561	1,459	.533	778
Year 6	4,174	522	1,357	.464	630
Year 7	3,882	485	1,261	.403	508
Year 8	3,610	451	1,173	.351	412
Year 9	3,357	420	1,092	.305	333
Year 10	3,122	390	1,014	.265	269
Year 11	2,903	363	944	.231	218
Year 12	2,700	337	876	.200	175
Year 13	2,511	314	816	.174	142
Year 14	2,335	292	759	.152	115
Year 15	2,172	271	705	.132	93
Year 16	2,020	252	655	.115	75
Year 17	1,879	235	611	.100	61
Year 18	1,747	218	567	.087	49
Year 19	1,625	203	528	.075	40
Year 20	1,511	189	491	.066	32
Year 21	1,405	176	458	.057	26
Year 22	1,309				0
					\$9,395
					Total Discounted Income

$$\begin{aligned} & \$9,395 \text{ (Total Discounted Income)} \\ & \$1,950 \text{ (Year 1: Royalty Interest Production)} = 4.818 \text{ (Multiplier for Royalty Interest)} \end{aligned}$$

Section 11.06(e)

(10) Personal Property Used in Natural Gas Production. -- The Tax Commissioner will annually derive and publish a report of the average value of the personal property used in natural gas production. This value will be multiplied by the number of producing wells on the property to determine the overall value of personal property used in natural gas production.

(f) Summary of Method for Valuing Active Natural Gas Producing Property. -- Each active natural gas well in West Virginia will be valued in the following way:

Working Interest

1. (Gross Receipts
Less Royalties) X (Multipliers) = (Working Interest
Value of Natural Gas
Producing Property)

PLUS

2. (Value for Personal
Property Used in Natural Gas Production) X (Number of Wells) = (Total Value of
Personal Property
Used in Natural Gas
Production)

Royalty Interest

1. (Royalties) X (Multiplier) = (Royalty Interest
Value of Natural Gas
Producing Property)

Section 11.06(g)

(g) Valuation of Assigned Natural Gas Reserves. -- The value per acre of assigned reserves shall equal the annual lease payment per acre times the multiplier.

A valuation schedule for assigned natural gas reserve properties will be determined annually by the Tax Commissioner on a regional basis. The Tax Commissioner will annually conduct a review of natural gas agreements transacted at arms length in all fifty-five counties to determine the annual lease payment per acre, as well as the lease term. The Tax Commissioner will also conduct a review of non-dry completions in all 55 counties as reported to the West Virginia Department of Mines, Office of Oil and Gas. The multiplier is the sum of the projected annual income stream during the lease term discounted in each year by a capitalization rate. The regions, the annual lease payment per acre, lease term, and multiplier will be published annually in a report by the Tax Commissioner and will be used to determine the values for assigned natural gas reserve property.

(h) Valuation of Unassigned Natural Gas Reserves. -- Unassigned reserves will be valued at the nominal rate of \$1.00 per acre. Unassigned reserves will be properties outside of the area of potential production as determined by the Tax Commissioner. The Tax Commissioner will annually

Section 11.06(i)

publish a report on the regions which are classified as unassigned natural gas reserves.

(i) Valuation of Wells that Produce Both Natural

Gas and Oil. -- The valuation of these producing wells shall be determined by use of the methods described in § 11.05 for oil and § 11.06 for natural gas, excluding the value for personal property used in both methods. These values shall be summed with the value of the personal property to result in the overall value of the oil and natural gas producing acreage. The Tax Commissioner will annually derive and publish a report of the average value of the personal property used in oil and natural gas production. This value will be multiplied by the number of producing and shut-in wells on the property to determine the overall value of personal property used in oil and natural gas production.

Section 11.07(a)

11.07. Valuation of Timberland.

(a) General. -- The appraised value (market value) of timberland shall be determined on the basis of the potential of the timberland to produce future net income. Potential future net income is capitalized in order to determine a present value, which is the appraised value. The ability of a stand of timber to produce wood products for sale or use depends primarily on the quality of the soil and certain topographic and climatic features, and is expressed as site index. Site index is therefore the principal criterion, influencing the appraised value of timberland. These factors will be reviewed annually by the Tax Commissioner for necessary updating of the method described in order to properly reflect future changes in the market values of timberland.

(b) Timber Productivity Maps. -- The Tax Commissioner shall prepare, or cause to be prepared, timber productivity maps indicating Timberland Productivity Class of forest land soils as Excellent to Very Good, Good to Fair, or Poor.

(c) Timber Productivity Classes. -- Timber productivity classes shall be based on site index and the ability of the site to yield timber, measured in thousands of board feet (MBF) per acre (Scribner rule) or cords per acre at the end of a rotation of eighty (80) years.

Section 11.07(d)

(d) Appraised Value of Timberland. -- The appraised value (market value) per acre of timberland shall be calculated by dividing average annual net income by the capitalization rate. [Details of the procedure for determining appraised value are found in paragraph (f)].

(e) Definitions. -- As used in this regulation, the following terms shall have the meanings ascribed herein:

(1) "Average annual gross income" means the gross income per acre calculated by dividing the end-of-rotation income by eighty (80) years.

(2) "Average annual net income" means the average annual gross income per acre minus the annual management cost per acre.

(3) "Capitalization rate" means the rate determined annually by the Tax Commissioner or his designated agents through the use of accepted standard methods for calculating such rates.

(4) "Christmas Trees" means evergreen trees commonly known as Christmas trees, including fir, hemlock, spruce and pine trees, that will be sold for use as Christmas trees.

(5) "Forest land" is a broad term describing land whose dominant characteristic is the support of tree growth. Forest land can include timberland

Section 11.07(e)

but is to be distinguished from timberland for the purposes of this regulation.

(6) "End-of-rotation income potential" means the amount of income per acre calculated by multiplying the end-of-rotation volume by the stumpage price.

(7) "Gross income" means the end-of-rotation (80 years) gross income potential determined for each productivity class using the following formula:
$$\text{Yield (MBF and/or Cords Per Acre)} \times \text{Stumpage Price} = \text{Gross Income.}$$

(8) "Management costs" means the cost determined annually by the Tax Commissioner to be the average annual cost of maintaining and protecting a producing forest. Maintenance costs include costs of inventory, boundary survey, and security. Protection costs include costs of protection against wildfire, insects and diseases, and vandalism. Management costs will be determined as an average for the entire State or by regions, or by Timberland Productivity Classes and will be deducted from gross annual income per acre to obtain net annual income per acre.

(9) "Orchard" means a systematic planting of fruit trees as opposed to individual plantings for

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ornamental purposes.

(10) "Owner of timber" means any person who owns an interest in timber, including a sublessor and an owner of a contract right to cut timber. Such owner of timber must have a right to cut timber for sale on his own account or for use in his, hers or its trade or business in order to own an interest in timber that is subject to ad valorem property taxes.

(11) "Site index" means a method of measuring the productivity of a site to grow trees. It is the height that average dominant and codominant trees will attain at a given age. For ad valorem property tax purposes, it shall be the height of upland oaks at fifty (50) years of age.

(12) "Stumpage price" means the market value of standing trees (on the stump) prior to felling and removal, and is expressed in dollars per unit of volume (MBF or cords). For appraisal purposes, real stumpage price will be assumed to be stable over time, and shall be calculated by the Tax Commissioner from quarterly reports prepared by the Department of Natural Resources and other available sources. A five-year moving average

Section 11.07(e)

shall be computed in order to minimize the effects of short-term fluctuations. Stumpage price shall be computed for each stumpage price region in order to reflect regional differences in markets, topography, and accessibility and shall be posted in the offices of the county assessors.

(13) "Stumpage price region" means a geographical region of the State, usually consisting of several counties, in which conditions of the timber, timber markets, topography, and accessibility are sufficiently similar to result in similar stumpage prices at any one point in time.

(14) "Timber" means and includes trees of any marketable species, whether planted or of natural growth, standing or down, located on public or privately owned land, which are suitable for commercial or industrial use.

(15) "Timberland" means:

(A) a parcel, or contiguous parcels, of at least ten (10) acres, that is (1) stocked with trees of any size or species capable of producing a usable crop of wood, or formerly having such tree cover within the last three years, (2) not currently developed or being

Section 11.07(e)

used for non-forestry purposes, and (3) devoted primarily to the production, in reasonable commercial quantities, of timber and timber products. A parcel or contiguous parcels supporting growth capable of producing commercial crops will be presumed to be timberland unless precluded as set out in Section 11.07(e)(15)(B).

(B) The following types of land, however, are not considered to be timberland:

- (1) A parcel, or contiguous parcels, on which there is standing timber that is less than ten (10) acres;
- (2) Property withdrawn from wood products production for use as parks, orchards, pasture, tillable fields, nurseries, Christmas tree plantations, or other uses which may result in the existence of tree cover but where commercial utilization of the trees for wood products is precluded;
- (3) Homesites or building sites, including adjacent areas which are occupied by trees used or manicured for ornamental

Section 11.07(e)

purposes;

(4) Farm woodlots or forest lands which are part of a farm and which are used primarily to support the needs of the farm for timber, fuel, and other farming purposes. Once a portion of such land is sold or cut for timber, the forest land will be taxed as timberland property, unless the land is used for some other purpose in which case it will be taxed according to its actual use.

(5) Land within corporate limits, unless the land has been devoted principally to the production of timber products and managed for that purpose, on a continuous basis for the preceding five years.

(16) "Timberland productivity classes" means timberland classified as Class 1 (excellent to very good), Class 2 (good to fair), or Class 3 (poor), according to Site Index.

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Table of
Timberland Productivity Classes

Timberland Productivity Class	Site Index	Yield Per Acre over 80 Years*	
		<u>MBF</u>	<u>Cords</u>
Class 1 (Excellent to very good)	80 (75 or more)	14.5	10.5
Class 2 (Good to fair)	70 (65-74)	9.7	14.9
Class 3 (Poor)	50 (less than 65)	1.5	20.7

*Scribner rule. Source: Schnur, G. Luther.
USDA Tech. Bul. No. 560. 1937
The Tax Commissioner may annually adopt a
different timber scale and to revise yield
annually as standards of timber utilization
change or as new information becomes available
on timber yields of forest stands.

(17) "Timberland productivity maps" means those maps prepared showing the productivity class of all timberland in this State. The primary source of information for preparation of these maps shall be the Soil Survey, published by United States Department of Agriculture (USDA) Soil Conservation Service.

(A) In those counties where soil surveys are not yet prepared, the best available information shall be used.

(B) For Webster and Pocahontas Counties:

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G. R. Trimble, Jr., "An Equation for Predicting Oak Site Index Without Measuring Soil Depth", Journal of Forestry, 62:325-327.

(C) For Wetzel, Doddridge, Braxton, Clay, and Gilmer Counties: L. R. Auchmoody and H. Clay Smith, Oak Soil-Site Relationships in Northern West Virginia. (USDA For. Serv. Res. Paper NE 434, 1979.)

(D) For Wayne, Lincoln, Boone, Logan, Mingo, and McDowell Counties: Unpublished results of research at West Virginia University (1983).

(f) Procedure for Determining Value. -- The following is a step-by-step procedure for determining the appraised value (market value) of timberland.

(1) All timberland is mapped according to productivity class See Section 11.07(e)(15) on USGS 7.5 minutes quadrangle sheets (1" = 2000'). The timberland productivity maps are then enlarged to a scale of 1" = 400' in order to conform to the scale of tax maps.

(2) Average stumpage price (5 year moving average) is determined by stumpage price regions from Department of Natural Resources quarterly

Section 11.07(f)

reports and other information.

(3) End-of-rotation (80 years) gross income potential per acre is determined for each productivity class using the following formula.

Yield (MBF and/or cords per acre) x stumpage price
= gross income.

(4) Annual gross income potential per acre is determined using the following formula. Gross income potential per acre ÷ 80 years = annual gross income potential per acre.

(5) Annual net income potential per acre is determined by deducting the annual management cost per acre from annual gross income potential per acre.

(6) Market value per acre is determined by capitalizing the net annual income per acre.

(7) A table is prepared showing market value of timberland by productivity classes.

(8) Mylar maps are prepared showing tax parcels and timberland productivity class.

(9) The appraised (market value) value of the property is calculated using the maps and table of timberland values. If a parcel contains two or more productivity classes, total value will be

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determined on a proportional basis, as in the
following example: 100 acre parcel, of which:

30 acres in Class 1
45 acres in Class 2
25 acres in Class 3
Appraisal = 30 AC x Class 1 Value
 +45 AC x Class 2 Value
 +25 AC x Class 3 Value
 Total Appraised Value Timberland

(g) Summary of Method of Determining Appraised Value. --

The formula to be used in determining the appraised value of
property categorized as timberland is as follows:

$$\text{Appraised Value Per Acre} = \frac{\text{Total Yield per acre x stumpage price}}{\frac{80 \text{ Years}}{\text{Capitalization Rate}}} - \frac{\text{Management Cost Per Acre}}$$

(h) Valuation of less Than 10 Acres. -- A parcel, or
contiguous parcels, of forest land totalling less than ten
(10) acres shall not be considered to be timberland and
shall be valued based upon market comparables, without
considering the productivity capacity of the site for timber
yield.

(i) Valuation of Farm Wood Lots. -- Farm wood lots and
the parts of a farm which are in timber shall be included in
the valuation of farm property under W. Va. Code § 11-1A-10,
except when the timberland is a separate parcel or tract
entered in the landbooks, and except when the primary use of
the farmland is in commerical forestry or the growing of

Section 11.07(j)

timber for commercial purposes. See W. Va. Code § 11-1A-3(f).

(j) Timberland Improvements. -- Improvements such as roads and service buildings that are a required (usual) part of timber management operations shall not be subject to an additional appraisal over and above the appraisal of the timberland. Improvements that are not a necessary part of the timber management operations, such as dwellings, cottages, hunting camps, and other recreational facilities, shall be subject to additional appraisals.

Section 11.08(a)

11.08. Valuation of Other Active Natural Resources

(a) General.

(1) Other active natural resource interests, such as limestone, fireclay, dolomite, sandstone, sand and gravel, and salt are some of the several estates in real property which may be owned either as a separate interest, or in conjunction with other interests, usually as fee ownership or as minerals ownership. If the other active natural resource interest is owned as a separate estate, either absolute or as a leasehold interest, West Virginia property tax law requires such ownership to be listed, valued and taxed based on its true and actual value.

(2) Other West Virginia natural resource interests, such as lead and zinc, manganese, iron ore, radioactive minerals, and oil shale, which at present are not being actively mined shall be valued in accordance with this regulation, when such interests are separated from the fee interest or begin being actively mined.

(3) These other natural resource interests may be owned without being mined. These other natural resources rights may exist where the natural

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resource is not actually present, or where the natural resource is unmineable or mined out.

(4) For valuation purposes, this regulation classifies other natural resource property ownership into the following categories:

- (A) Active
- (B) Active Reserves
- (C) Inactive Reserves
- (D) Mined-Out/Unmineable/Barren

(b) Definitions.

(1) Acres Mined. -- Acres mined per year is the average annual production as defined in 11.08(b)(4) divided by the product of the thickness in feet of the natural resource seam being mined as detailed in mining permit reports times the tons per acre foot, as set out below, times the recovery rate according to the actual recovery of the natural resource per acre being experienced at the mining operation.

For use in these regulations the following in-place tons per acre-foot figures will be used:

Limestone = 3,600 tons per acre foot
Sandstone = 3,600 tons per acre foot
Clay and Shale = 3,050 tons per acre foot

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Sand and Gravel = 2,400 tons per acre foot

Salt = 2,950 tons per acre foot

(2) Active Mining Property. -- This term refers to the mineable and merchantable natural resource on a parcel involved in a mining operation. For the purposes of determining active mining property, contiguous parcels under one ownership or owned or leased by inter-related businesses or individuals shall be treated as one parcel. The active mining acreage of any natural resource or resources on a parcel shall be calculated by multiplying acres mined times the determined life of the mine. If this calculation, however, results in an acreage figure that is higher than the total mineable acreage of that natural resource on that parcel, the lower figure shall be used. This calculation shall be made of each "other natural resource" activity being mined on the parcel.

For use in these regulations, the maximum active mining property for each natural resource will be as follows:

(A) Surface Limestone. -- The active mining property of a surface limestone mine shall be derived by multiplying ten (10) years times

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acres mined

(B) Deep Limestone. -- The active mining property of a deep limestone mine shall be derived by multiplying fifteen (15) years times acres mined.

(C) Sandstone. -- The active mining property of a surface sandstone mine shall be derived by multiplying ten (10) years times acres mined.

(D) Surface Clay and Shale. -- The active mining property of a surface clay and shale mine shall be derived by multiplying ten (10) years times acres mined.

(E) Deep Clay and Shale. -- The active mining property of a deep clay and shale mine shall be derived by multiplying fifteen (15) years times acres mined.

(F) Sand and Gravel. -- The active mining property of a sand and gravel mine shall be derived by multiplying ten (10) years times acres mined.

(G) Salt. -- The active mining property around each salt well shall be a maximum of 35 acres. After a well's first year of

Section 11.08(b)

production, active mining property shall be derived by subtracting acres mined from the 35 acres.

(3) Active Reserves. -- This term means and includes the entire residual acreage of the mineable and merchantable natural resource being mined in excess of the active mining property, or the number of acres corresponding to 25 years times the acres mined per year [§ 11.08(b)(1)], whichever is less.

(4) Average Annual Production. -- The annual rate of natural resource production, in tons per fiscal year, ending June 30th of each calendar year, determined by a weighted average of three (3) years net production.

The weighted average shall be determined by multiplying the most recent year's production by .4, the previous two (2) years production multiplied by .3, and the resulting three (3) figures added together to arrive at the average annual production. However, if there is no production during the most recent fiscal year then the property will not be valued as active mining property for that year.

Where there has been no production during the

Section 11.08(b)

second or third most recent fiscal year, the production for the current year will be factored by .5 and the production for the earlier fiscal year in which production existed will be factored by .5 and the resulting two figures will be added together to arrive at the average annual production.

If there was no production in both the second and third most recent fiscal years then the production for the most recent fiscal year will be factored by 1.0 and the resulting figure will be the average annual production.

(5) Barren. -- This term means and includes those properties where other natural resource rights are separately and/or individually owned, and the existence of any natural resource has not been established.

(6) Capitalization Rate. -- A rate used to convert an estimate of income into an estimate of market value. [For further explanation see § 11.08(a)(1)(C)]

(7) Inactive Reserves. -- Inactive reserves are those natural resource acres or portions thereof which are mineable and merchantable but are not

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active mining property or active reserves.

(8) Life of Mining Operation. -- The life of the mining operation (in years) shall be equal to the active mining property acreage divided by acres mined. The maximum mine life shall be ten (10) years for surface mines involving limestone, sandstone, clay and shale, and sand and gravel, and for wells used in the production of salt, and fifteen (15) years for deep mines involving limestone, and clay and shale. In calculating the years involved in the life of active mining property, all fractional figures will be rounded to the nearest whole number.

(9) Merchantable Natural Resource. -- A merchantable natural resource is one ordinarily extracted for sale and can usually be sold at a profit, or which is extracted for use in the manufacture of other products (e.g., salt for use in making paint and chemicals).

(10) Mineable Natural Resource. -- A mineable natural resource is one which could be profitably mined by judicious methods.

(11) Mined-Out. -- A natural resource, or any portion thereof, determined to be depleted by

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prior mining operations, and which is not mineable and merchantable by modern technology.

(12) Mining Operation. -- This term shall mean an enterprise engaged in actively obtaining or preparing to obtain a natural resource or its by-products from the earth's crust, including underground, surface and auger mines. Each mining operation may have more than one area designated as "Active Mining Property" as defined in Section 11.08(b)(2). This designation of "Active Mining Property" areas shall be determined as follows:

- (i) If the mining operation is producing a natural resource from a Department of Natural Resources or Department of Mines permit, then that operation will be designated an "Active Mining Property." However, if the mining operation is producing from more than one natural resource under a Department of Natural Resources or Department of Mines permit, then each active natural resource will be designated as an "Active Mining Property."
- (ii) If the mining operation is producing a natural resource at different locations, portals and/or faces under one specific

Section 11.08(b)

Department of Natural Resources or Department of Mines permit, then that operation will be designated as one "Active Mining Property." However, if the production of the natural resource involves different mining techniques (e.g. surface, auger or deep mining method), or if mining sites are separate and generally independent, then such sites will be designated as separate "Active Mining Properties."

(13) Multiplier. -- This term shall mean the "present worth of one per period" for the life of the mining operation employing the capitalization rate determined in section 11.08(c)(1)(C), as determined by a standard mid-year life Inwood table.

(14) Royalty Rate. -- The royalty rates determined annually by the Tax Commissioner are the current market royalty rates for arms-length, willing-buyer, willing-seller, transactions for each of the different types of natural resources and types of mining operations derived in section 11.08(c)(1)(B). The royalty rates are deemed to be paid to each owner of a natural resource estate for all active-

Section 11.08(c)

ly mined property.

(15) Unmineable Natural Resource. -- A natural resource which is not mineable and merchantable as defined above.

(c) Valuation Methods.

(1) Method for Determining Value of Active Mining Property.

(A) General. -- The value of active mining property shall be the average annual production times a royalty rate times a multiplier. In no case will the active mining property be valued at less than its value as inactive reserve property.

(B) Royalty Rate. -- For use in the formula prescribed by this regulation, the royalty rate(s) will be determined for each of the different types of natural resources and types of mining operations. These will include specific royalty rates for (1) limestone (dolomite) surface mine; (2) limestone (dolomite) deep mine; (3) sandstone (industrial) surface mine; (4) sandstone (aggregate) surface mine; (5) clay and shale surface mine; (6) clay and shale deep mine; (7) sand

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and gravel surface mine; and (8) salt wells. These royalty rates shall be established annually by the Tax Commissioner after review of recorded, willing seller-willing buyer arms-length natural resource property leases that have occurred in the State of West Virginia during the eight (8) years (W. Va. Code § 11-1A-3) prior to appraisal date, and through inspection of other appropriate information. This review will place a greater emphasis on the information and leases transacted during the most recent years. For those natural resources that are not involved in any recorded lease agreements, the Tax Commissioner will derive a royalty rate through surveys conducted with private appraisal and/or engineering companies, data provided by the West Virginia Geological and Economic Survey, West Virginia Department of Natural Resources, West Virginia Department of Mines, West Virginia Department of Highways, and other appropriate information from the specific natural resource companies involved. The Tax Commissioner will maintain

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and publish this survey (report) of royalty rates on or before March 31 of each year; will accept written public comment on the survey until May 1 of each year; and issue final royalty rates on or before July 1 of each year. This survey of royalty rates will be constructed to indicate the following: (1) county in which leased property is located; (2) deed book, page number; (3) lessor-lessee; (4) date recorded; (5) acreage involved; (6) type of mining operation; (7) consideration; and (8) a narrative on rates derived for those non-leased natural resources. From this survey, the Tax Commissioner will select the royalty rate(s) that best typify such transactions. In order to convert percentage royalty rates into specific value per ton rates, the Tax Commissioner will conduct a review of the specific natural resource selling prices in West Virginia by requesting such information from private purchasers, State Department of Highways, and West Virginia Geological and Economic Survey, as well as other informative sources available

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and select specific selling price rates(s) based on prices best typifying activity in each appraisal year. The selected selling prices per ton when multiplied by the percentage royalty rate will result in a price per ton royalty rate factor.

(C) Capitalization Rate. -- This capitalization rate will be developed considering the techniques found in general practice in the appraisal profession when developing an income approach valuation estimate. Below is a listing of terms and definitions employed in developing various capitalization rate indicators.

(1) Definitions.

(i) Bands of Investment Discount Component. -- A discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing.

(ii) Discount Component. -- A rate

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reflecting a provision for returning to an investor a sum of money equal to the aggregate of the anticipated return-on-investment over the economic life of an investment.

(iii) Economic Life Method of Recapture.

-- A method of developing a recapture rate by estimating the period of time an investment will produce a return and estimating an equal periodic rate of recapture of the investment over this return period.

(iv) Management Rate. -- A rate reflecting a return to an investor for the management of similar investment portfolios.

(v) Market Comparison Discount.

--A discount rate derived by dividing income net of the recapture component and property taxes by the arms-length selling price of the property.

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- (vi) Market Comparison Method of Recapture. -- A recapture rate estimated by dividing income net of the discount component and property taxes by the arms-length selling price of the property.
- (vii) Non-liquidity Rate. -- A rate reflecting a return to an investor representing the loss of interest on an investment arising from the time required to sell the investment.
- (viii) Property Tax Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the economic life of an investment.
- (ix) Recapture Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to his investment.
- (x) Risk Rate. -- A rate reflecting a return to an investor necessary

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to attract capital to an investment containing a possible loss of principal and/or interest.

(xi) Safe Rate. -- A rate reflecting a return to a investor on an investment which has little, if any, livelihood of loss of principal or anticipated return on investment.

(xii) Summation Discount Component.-- A discount rate expressed as the aggregate of a safe rate, risk rate, non-liquidity rate, and management rate.

(2) Discussion. -- The capitalization rate as defined in Section 11.08(b)(6) will be determined annually by the Tax Commissioner through the use of generally accepted methods for estimating such rates. The rate so developed will consider a level-terminal income series which is indicative of active mining properties. The capitalization rate used to value active mining properties

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will be developed giving consideration to the following three (3) approaches:

(a) Discount Component

(i) Market Comparison -- Sufficient sales data permitting, the market comparison technique will be employed as the primary indicator for an appropriate discount component. The market comparison discount component will be developed by dividing aggregate royalty rate income streams adjusted for recapture by verified recorded arms-length sales transactions for active mining properties which have occurred in the State of West Virginia during the eight (8) years (W. Va. Code § 11-1A-3) prior to the annual appraisal date. The market comparison discount component selected will be based upon those rate

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indicators best typifying activity in this eight (8) year research period. In selecting the discount component greater emphasis will be given to information from arms-length sales occurring during the most recent years of the study.

(ii) Summation Technique -- In the absence of sufficient data to statistically support primary consideration of the market comparison technique, the summation techniques will be given primary consideration. The summation discount component will be developed reflecting the following four (4) major sub-components:

- (1) Safe Rate
- (2) Risk Rate
- (3) Non-liquidity Rate
- (4) Management Rate

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The "Safe Rate" will be developed through review of quarterly interest rates offered on thirteen (13) week United States Treasury Bills for a period of three (3) years prior to the appraisal date. The "Risk Rate" will be developed through review of data resulting from an annual survey of lending institutions, such survey reflecting interest rates required on loans for acquisition and/or development of natural resource properties. This survey will be conducted for a three (3) year period prior to the appraisal date. Results of the survey will be compared to quarterly interest rates offered on thirteen (13) week United States Treasury Bills for the same three (3) year

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period. An interest differential will then be selected representing the "Risk Rate." The "Non-liquidity Rate" will be developed through an annual survey to determine a reasonable estimate of time that natural resource properties remain on the market before being sold. The market time thus determined will be used to identify United States Treasury Bills with similar time differentials in excess of thirteen (13) week Treasury Bills. The interest differential between these securities will be deemed to be representative of the "Non-liquidity Rate." The "Management Rate" will be developed through a survey of investment firms to identify charges for the management of

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investment portfolios.

(iii) Bands-of-Investment --

Data permitting the Bands-of-Investment technique will be considered in conjunction with the two (2) previously mentioned discount estimate components.

(b) Recapture Component. -- Selection of a multiplier will be accomplished through access of a standard mid-year life Inwood table. The Inwood table has a factor for recapture built into the table coefficients. Inclusion of a recapture component in the capitalization rate is therefore not appropriate.

(c) Property Tax Component -- The effective property tax rate will be estimated by multiplying the assessment ratio by the average statewide levy rate for Class III property.

(3) The surveys referenced in Section

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11.08(c)(1)(C)(2) will be conducted and tentative results published by the Tax Commissioner on or before March 31 of each year. Public comment on such surveys will be accepted until May 1 of each year, and final results will be issued on or before July 1 of each year.

(2) Valuation of Active Reserves.

(A) General. -- The value of each acre of active reserves shall be one-tenth of the per acre value of active mining property.

(B) Per Acre Value of Active Mining Property. -- Per acre value of active mining property equals the value of active mining property as described in § 11.08(c)(1) divided by the number of acres in the active mining property.

(C) In the event that the active reserve value per acre is less than the inactive reserve value per acre, the inactive reserve value per acre will be used.

(3) Valuation of Inactive Reserves. -- Inactive reserve values for limestone, sandstone, clay and shale, sand and gravel, and salt shall be deter-

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mined annually by the Tax Commissioner. This determination will be conducted by the Tax Commissioner after review of recorded willing seller-willing buyer arms-length natural resource property sales that have occurred in the State of West Virginia during the eight (8) years (W. Va. Code § 11-1A-3) prior to the appraisal date, and through inspection of other appropriate information. This review will place a greater emphasis on the information and sales transacted during the most recent years. For those natural resource properties which are not involved in any recorded sale agreements, the Tax Commissioner will derive the valuation through surveys conducted with private appraisal and/or engineering companies, data provided by the West Virginia Geological and Economic Survey, West Virginia Department of Natural Resources, West Virginia Department of Mines and the West Virginia Department of Highways, and other appropriate information as requested from the natural resource owners or producers. The Tax Commissioner will maintain and publish this survey (report) of inactive natural resource property sales on or before March 31 of each year; will

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accept written public comment on the survey until May 1 of each year; and issue the final values per acre on or before July 1 of each year. This survey of inactive reserve natural resource sales will be constructed to indicate the following:

- (1) county in which the property is located;
- (2) deed book, page number;
- (3) grantor-grantee;
- (4) date recorded;
- (5) acreage involved;
- (6) natural resource involved;
- (7) consideration,
- (8) consideration per natural resource acre sold and
- (9) a narrative on values derived for those natural resources not involved in sales.

From this survey, the Tax Commissioner will select the values per acre for each natural resource that best typify such transactions.

Also as part of this review, the Tax Commissioner will consider the effect of inactive mining properties being adjacent to active mining properties and active reserves in determining values under this section.

(4) Valuation of Mined-Out/Unmineable/Barren Other Natural Resource Properties. -- Properties in this category shall be valued at \$1.00 per surface acre.

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(5) Summary of Valuation of Methods.

Table 5 - Valuation of Other Natural Resources

(A) Properties with mineable/merchantable
natural resources shall be valued as follows:

Active Mining Acres

(Average Annual Natural Resource Production in Tons)	X	(Royalty Rate Per Ton)	X	(Multiplier)	=	(Active Natural Resource Real Property Value)
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Active Reserve Acres (Part of Active Operation)

(Total Active Reserve Acres)	X	(Per Acre Value of Active Min- ing Property)	X	10%	=	(Active Reserve Other Natural Resource Real Property)
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Inactive Reserve Acres (Leased or Permitted Acres - No Mining)

(Total Inactive Reserve Acres)	X	(Inactive Reserve Value Per Acre)	=	(Inactive Reserve Other Natural Resource Real Property Value)
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(B) Mined-out, unmineable and barren natural
resource properties shall be valued at one
dollar \$1.00 per surface acre.

(C) The total value for the natural resource
properties will be the sum of the value of
the active mining property(s), active re-
serves, the inactive reserves and the mined-
out/ unmineable/barren acres.

(D) If other real property interests are
owned in the natural resource acreage, then

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the value of those additional interests shall be added to the total value of the natural resource properties to arrive at the total real property value.

(6) Leasehold Interests. -- These regulations generally attribute the value of the natural resource to the owner of the natural resource property. In those circumstances, however, where the owner of the property is subject to a lease requiring the owner to permit mining at royalty rates substantially below current market values, the owner may petition the assessor, and on appeal, the Tax Commissioner, to attribute a portion of the value of the coal determined by this formula to the leaseholder.

Section 11.09(a)

11.09. Valuation of Commercial and Industrial
 Real Property.

(a) General. -- This regulation describes the method for determining the appraised value (market value) of commercial and industrial real property other than natural resource real property, land utilized for farming purposes and operating public utility property.

(1) The appraised value (market value) of commercial and industrial real property is the price at or for which a particular parcel would sell if it was sold to a willing buyer by a willing seller in an arms-length transaction without either the buyer or the seller being under any compulsion to buy or sell. In determining appraised value, primary consideration shall be given to the trends of price paid for like or similar property in the area or locality wherein such property is situated over a period of not less than three (3) nor more than eight (8) years preceding the base year of the statewide reappraisal. Additionally, for purposes of appraisal of any tract or parcel of real property used for commercial or industrial purposes, including chattels real, the appraisal shall consider the following factors:

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- (A) The location of such property;
- (B) Its site characteristics;
- (C) The ease of alienation thereof, considering the state of its title, the number of owners thereof, and the extent to which the same may be the subject of either dominant or servient easements;
- (D) The quantity of size of the property and the impact which its sale may have upon surrounding properties;
- (E) If purchased within the previous eight years, the purchase price thereof and the date of each such purchase;
- (F) Recent sale of, or other transactions involving, comparable property within the next preceding eight years;
- (G) The value of such property to its owner;
- (H) The condition of such property;
- (I) The income, if any, which the property actually produces and has produced within the next preceding eight years; and
- (J) Any commonly accepted method of ascertaining the market value of any such property, including techniques and method

Section 11.09(a)

peculiar to any particular species of property if such technique or method is used uniformly and applied to all property of like species.

(2) There are two types of improvements which are considered in the appraisal process; these are improvements to the land and improvements on the land.

(A) Improvements to the land are land improvements, the value of which are included in the value of the land. Some examples of these improvements include privately owned drainage systems, driveways, walks etc.

(B) Improvements on the land are buildings and structures. They are valued separate and apart from the land.

(3) In addition to improvements, other important considerations affecting the value of land, excluding farm land, are:

- (A) Location,
- (B) Size,
- (C) Shape,
- (D) Topography,
- (E) Accessibility,

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- (F) Present use,
- (G) Highest and best use,
- (H) Easements,
- (I) Zoning,
- (J) Availability of utility,
- (K) Income imputed to land and
- (L) Supply and demand for land of a particular type.

(4) Each of these factors should be considered in the appraisal of a specific parcel. Some, however, may be given more weight than others.

(b) Generally Accepted Appraisal Methods Used to Establish the Value of Industrial and Commercial Real Properties.

(1) In determining an estimate of fair market value, the tax commissioner will consider and use where applicable, three generally accepted approaches to value: (A) cost, (B) income, and (C) market data.

A. Cost Approach. -- To determine fair market value under this approach, replacement cost is reduced by the amount of depreciation. In applying the cost approach, the Tax Commissioner will consider three types of

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depreciation: physical deterioration, functional obsolescence, and economic obsolescence.

B. Income Approach. -- A property's present worth is directly related to its ability to produce an income over the life of the property. The selection of an overall capitalization rate will be derived from current available market data by dividing annual net income by the current selling price of comparable properties. The present fair market value of the property shall then be determined by dividing the annual economic rent by the capitalization rate.

C. Market Data Approach. -- The market data approach will be applied by considering the selling prices of comparable properties.

(2) Correlation. -- Once generated, the various estimates of value may be considered in determining a final value estimate. However, the income approach is ordinarily inappropriate for properties such as franchised restaurants, governmental properties, hospitals, etc. In these cases, the cost and/or market approaches may be more suitable

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in estimating fair market value.

When possible, the most accurate form of appraisal should be used, but because of the difficulty in obtaining necessary data from the taxpayer, or due to the lack of comparable commercial and/or industrial properties, choice between the alternative appraisal methods may be limited.

(3) Industrial and Commercial Site Classi-

fication. -- For purposes of valuing active and residual industrial and commercial land in West Virginia, valuing sites shall be separated into four broad categories: heavy industrial sites, light industrial or commercial sites, industrial parks, and mine sites. These sites shall be further classified when appropriate into active and residual portions. These classifications will be considered when applying and establishing the valuation method to the industrial and/or commercial properties.

(c) Definitions.

(1) Active Industrial or Commercial Land. That portion of land used for industrial and commercial purposes.

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(2) Capitalization Rate. -- A rate used to convert an estimate of future income to an estimate of present market value.

(3) Commercial Property. -- Income producing real property used primarily but not exclusively for the sale of goods or services, including but not limited to offices, warehouses, retail stores, apartment buildings, restaurants and motels.

(4) Cost Approach. -- The appraisal process in which replacement cost of improvements, less all types of depreciation, is added to a land value in determining an estimate of the fair market value for improved real property.

(5) Economic Obsolescence. -- A loss in value of a property arising from "outside forces" such as changes in use, legislation that restricts or impairs property rights, or changes in supply and demand relationships.

(6) Economic Rent. -- The rental amount which a space or property would attain in the open market at the time of appraisal, whether it is lower, higher or the same as the actual contract rent.

(7) Fair Market Value. -- The highest price in terms of money that a property will bring in a

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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.

(8) Functional Obsolescence. -- The loss of value due to factors such as excess capacity, changes in technology, flow of material, seasonal use, part-time use or other like factors. The inability to perform adequately the functions for which an item was designed.

(9) Heavy Industrial Site. -- An industrial site containing more than five (5) acres of physical plant.

(10) Income Approach. -- The appraisal process of discounting an estimate of future income into an expression of present worth.

(11) Industrial Parks. -- A parcel or group of parcels dedicated primarily to commercial and industrial development.

(12) Light Industrial or Commercial Site. -- An industrial site containing five (5) or less acres of land.

(13) Market Data Approach -- The appraisal process

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of examining sales data and translating such data into an estimate of present worth.

(14) Mine Sites. -- A parcel of land containing the mine portal and/or shaft, parking lots, water treatment facilities, mine fan areas, refuse piles and preparation plant sites.

(15) Physical Deterioration. -- A loss in value due to wear and tear.

(16) Replacement Cost. -- The cost of constructing a building or improvement having the same utility, but using modern materials, design, and workmanship.

(17) Residual Industrial or Commercial Land. -- That portion of a parcel of real estate that is currently non-productive in terms of the industrial or commercial activity located thereon. This classification of land would include land held for industrial expansion, land marginally suitable for industrial use and excess acreage.

(d) Valuation of Leaseholds in Industrial and Commercial Real Properties.

(1) General.

(A) A leasehold in real property is taxable for ad valorem property tax purposes

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if it has a separate and independent value from the freehold. Great A&P Tea Co., Inc. v. Davis, W. Va., 278 S.E.2d 352 (1981).

Where leaseholds are of short duration, the rent paid will usually reflect income to the owner of the freehold commensurate with the fair market value of the real property.

Under ordinary conditions, the leasehold itself will not have any ascertainable market value. Consequently, in the normal circumstance, the appraised value of the freehold subject to a leasehold shall be determined in the same manner that the appraised value of similar commercial or industrial real property not subject to a leasehold is determined.

(B) However, under circumstances involving long-term leaseholds where the leasehold is itself a marketable asset of value, the leasehold shall be valued as hereinafter provided in this regulation. The leasehold interest being a chattel real shall be listed and taxed as Class III or Class IV tangible personal property depending on the location of the

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freehold. See W. Va. Code §§ 11-5-3, 11-5-4 and 11-8-5.

(C) The appraised value of a freehold estate shall be the appraised value of the freehold determined without regard to the leasehold, minus the appraised value of the leasehold.

(2) Definitions.

(A) Leasehold. -- (Also known as a leasehold estate.) An interest in real property created by a lease contract. The leasehold is the right to occupy and use the property for the term fixed in the lease, at a stated rental, and subject to conditions set forth in the contract.

(B) Net Rental. -- An agreement specification whereby the lessor receives an annual rent net to him, with the lessee paying all property taxes, insurance and cost of building maintenance, as well as operating expenses.

(C) Gross Lease. -- A lease agreement wherein the lessor pays all fixed charges (property taxes, maintenance, etc.).

(D) Property Residual Method of Valuation. --

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This method assumes that, at the expiration of the term of the lease, even though the building may have little value, the land will have a reversionary value. Both the income stream for the estimated useful life of the building and the reversionary interest in the land are discounted to present worth. This method is applicable where the building is old, the site under-improved, or the improvements have a short remaining useful or economic life.

(E) Leased Fee. -- The interest remaining in one who has granted possession and occupancy to another for a designated term under a lease contract. Generally, it is the interest of the owner in his property after it has been leased.

(F) Freehold Estate. -- An estate in land or other real property, of uncertain duration; that is, either of inheritance or which may possibly last for the life of a tenant at the least. For an estate to be freehold it must possess two characteristics:

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- (1) Immobility.
- (2) Indeterminate duration (no fixed termination of the interest.)
- (3) In valuing a leasehold:
 - (A) The total value of the property must be estimated and then allocated among the various interests in the property under the terms of the lease; and
 - (B) The appraiser must determine whether or not value has been created as a result of a favorable lease, in addition to the total value of the property.
- (4) In deciding whether a leasehold has value, and if so, what value to assign, the appraiser must:
 - (A) Estimate the value of the entire property, as though not encumbered by the lease, then
 - (B) Estimate the value of one of the partial interests, either the leasehold estate of the lessee or the leased fee of the lessor,
 - (C) The value of the partial interest thus arrived at is deducted from the value

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of the entire property to obtain the value of the other partial interest.

(5) To value a leasehold interest, the appraiser shall consider the present (discounted) worth of the rent saving, when the contractual rent at the time of appraisal is less than the current market rent. If the land is improved by the lessee, then the value of the leasehold interest shall be the value of the saving in ground rent, if any, in addition to the value (not cost) of the improvements of the lessee. If the contractual rent is greater than the currently established market rent, the present worth of the difference shall be subtracted from the value of the improvement.

(6) When a property is under long-term lease to a prime tenant, such as a nationally-known chain store concern, and the estimated useful life of the building exceeds the term of the lease, the "property residual technique" of evaluation may be used along with other generally accepted appraisal techniques, i.e., cost and market data approaches.

Section 11.10(a)

11.10. Valuation of Commercial and Industrial
 Personal Property.

(a) General. -- The object of these regulations is to provide absolute methodologies for appraising commercial and industrial furniture, fixtures, machinery, equipment, inventory, material and supplies.

(b) Definitions.

(1) Economic Obsolescence. -- A loss in value of a property arising from "outside forces" such as changes in use, legislation that restricts or impairs property rights, or changes in supply and demand relationships.

(2) Functional Obsolescence. -- Loss of value due to an inability to perform adequately the function for which commercial and industrial personal property was designed.

(3) Physical Deterioration. -- A loss in value due to natural wear and tear of commercial and industrial personal property resulting from age, use, abuse, etc.

(c) Situs.

(1) The situs of commercial and industrial furniture, fixtures, machinery, equipment, inventory, material and supplies shall depend upon an analy-

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sis of the residence of the owner, and the location of the personal property and whether the personal property is subject to personal property taxation by another state and is taxed by the other state.

(2) All commercial and industrial personal property belonging to persons or corporations residing in this State, whether such property be in or out of the State shall be taxable, as personal property, unless the property be actually and permanently located in another state, and is subject to taxation as personal property and is actually taxed as personal property in the other state.

(3) All commercial and industrial personal property located within this State, though owned by persons or corporations residing in another state shall be taxable as personal property by this State.

(d) Valuation of Commercial and Industrial Personal Property.

(1) In determining an estimate of fair market value, three approaches to fair value will be considered and used where applicable: (A) cost,

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(B) income, and (C) market. (For appropriate definitions and discussion of these methods, see §§ 11.09(a)(3)(9) and 10, and 11.08 (c)(1)(A)(B) and (C).

(2) Correlation -- Once generated, the various estimates of value will be considered in arriving at a final value estimate. However, the income approach to value is generally considered inappropriate in determining fair market value estimates of personal property for franchised restaurants, governmental properties, hospitals, etc. In these cases, the cost and/or market approaches may be more suitable in estimating fair market value.

When possible, an audit appraisal method should be used, but because of the difficulty in obtaining necessary accounting data from the taxpayer, or due to the lack of comparable commercial and/or industrial personal properties, a physical appraisal method may be necessary.

(3) Adjustments -- When physically inspecting commercial and industrial personal property for appraisal, the local assessor should take into consideration three types of depreciation; physi-

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cal deterioration, economic obsolescence and functional obsolescence.

(4) Valuation of Common Commercial and Industrial Personal Property. --Frequently encountered

commercial and industrial personal properties common to numerous businesses within a taxing district shall be valued using current appraisal manuals furnished by the Tax Commissioner to local assessors. Some examples of such personal property are restaurant equipment, retail outlet equipment, and hotel and office furniture.

(5) Valuation of Specialized Industrial Equipment.

(A) Specialized industrial equipment must be valued using the most accurate information available from the taxpayer, e.g. original cost, date of acquisition, depreciation, salvage value, condition, etc. Comparable appraisals may be obtained from the Tax Commissioner, when actual cost information is not available.

(B) The Tax Commissioner will provide and periodically update lists of industrial machinery and equipment common to certain

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industrial enterprises. These lists will assist local assessors by familiarizing them with industrial processes, equipment terminology, and equipment values.

Section 11.11(a)

11.11. Valuation of Intangible Personal Property Including Stock, Accounts Receivable and Stock in Banks and Capital of Savings and Loan Associations.

(a) Scope. -- This regulation presecibes how the appraised value of Class I intangible personal property will be determined during the statewide reappraisal mandated by the West Virginia Constitution, article X, § 1b. This regulation does not define what property is subject to assessment for ad valorem property taxes. Second, this regulation does not prescribe how the appraised values determined under it will be adjusted on account of substitutions, accretions, improvements, additions, replacements, destructions, removals, casualties, acts of God, waste or any like occurrence.¹ Third, this regulation does not describe how the phase-in of increased valuation, if any, resulting from the first statewide reappraisal will apply to intangible personal property.² Fourth, this regulation does not prescribe when appraised values determined under it will first be used.³

¹W. Va. Code § 11-1A-14(b) requires the Tax Commissioner to propose a legislative rule covering this subject on or before September 1, 1984.

²W. Va. Code § 11-1A-22 relates to determination of the phase-in, application and limitations.

³W. Va. Code § 11-1A-14(c) prohibits use of the first statewide reappraisal until the Legislature directs their use.

Section 11.11(b)

(b) Promulgation. -- This proposed regulation was filed in the State Register on September 1, 1983, as required by W. Va. Code § 11-1A-11. Subsequent to the public hearing and comment period, this regulation was amended and refiled in the State Register on November 18, 1983. A second public hearing on December 19, 1983, will precede its submission to the Legislature in January, 1984. This regulation will not take effect until after an act of the Legislature is passed authorizing its promulgation.

(c) Construction. -- This regulation shall be applied, and interpreted in case of any ambiguity, in conformity with the West Virginia Constitution, art. X, §§ 1, 1a and 1b, and the several provisions of the West Virginia Code relating to the definition and determination of appraised value for purposes of ad valorem property taxation. In no event shall this regulation be construed as requiring any property to be appraised in excess of its market value, or as subjecting to tax any property that is exempt from ad valorem property taxation under laws of the United State or this State.

(d) Property Subject to This Rule. -- All Class I intangible property subject to statewide reappraisal having a taxable situs in this State shall be valued in accordance with this rule. The term "Class I intangible property" means and includes only notes, bonds, bills and accounts

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receivable, stock and other similar intangible personal property: Provided, that it does not include:

- (1) Money and bank deposits which W. Va. Const. art. X, § 1a exempts from tax.
- (2) Bonds and other evidences of debt of this State, or of a political subdivision or authority thereof, which W. Va. Const. art. X, § 1 permits the Legislature to exempt from tax and which by law have been exempted from tax. See Appendix I for a list of statutes exempting these obligations and securities from tax.
- (3) Bonds and other evidences of debt which are direct obligations of the United States, or of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from ad valorem property taxation by the states and their political subdivisions.
- (4) Any other note, bond, bill, account receivable, stock or other evidence of debt that does not have a taxable situs in this State.
- (5) Shares of capital stock owned by residents of this State in corporations actually located in other states, and whose property is taxed by the

Section 11.11(d)

laws of such other states, are exempt from tax under W. Va. Code § 11-5-1 (1961).

(6) Any share, portion or interest owned by any person in a company, whether incorporated or not, when the property, stock or capital thereof is assessed to such company, is exempt from tax under W. Va. Code § 11-5-6 (1933).

(e) Species of Class I Intangibles. -- The general species or subclassifications of Class I intangible personal property are as follows:

(1) Notes. -- The term "note" means and includes any writing signed by the maker, containing an unconditional promise to pay a sum certain in money, on demand or at a definite time. The note may be payable to a named person(s) or to bearer, and may be either negotiable or nonnegotiable. The term "note" does not include money, documents of title or investment securities. Notes subject to appraisal include the following:

- (A) Personal and business notes receivable.
- (B) Notes and evidences of debt whether secured or unsecured.
- (C) Mortgage notes receivable.
- (D) Notes of debt held by corporations which

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represent amounts due from subsidiary or affiliated corporations.

(E) Commercial paper and participation certificates, whether originally issued or resold.

(F) All loans and other receivables which are evidenced in writing by a note.

(2) Bonds and Debentures. -- The term "bond" means a certificate or evidence of debt on which the issuing company or governmental body promises to pay the bondholders a specified amount of interest for a specified length of time, and to repay the loan on the expiration date. In every case a bond represents debt. Commonly, bonds are secured by a mortgage or lien on specific property. Bonds subject to appraisal include the following:

(A) Bonds and debentures of both domestic and foreign corporations.

(B) Bonds and debentures of other states and their political subdivisions.

(C) Bonds of public housing authorities organized under the laws of other states.

(D) Bonds and other similar debt instruments

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which are obligations of nonexempt quasi governmental agencies, commercial banks or other mortgage lenders, even though such instruments may be guaranteed as to payment by the United States Government.

(E) Bonds and debentures issued by commercial banks or other financial institutions.

(3) Bills and Accounts Receivable. -- The term "bills and accounts receivable" embraces only contract obligations, express or implied, owing to a person on open account. West Virginia Pulp and Paper Company v. Karnes, 137 Va. 714, 120 S.E. 321 (1923).

Bills and accounts receivable subject to appraisal includes the following:

(A) Trade accounts, trade acceptances, open book accounts and charge accounts acquired in connection with any trade or business.

(B) Revolving type charge accounts, even though interest may be required on the balance due.

(C) Credit balances (including credits resulting from "short sale" transactions) on accounts with investment brokers and security dealers.

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- (D) Dealer reserves and finance reserves which are due from a person engaged in the business of banking.
- (E) The total amount of periodic or progress billings (excluding retainage) to which a contractor is entitled under terms of contracts in progress.
- (F) Accounts receivable of all persons and businesses whether operating on a cash basis or accrual basis for income tax purposes.
- (G) Accounts receivable of professional associations and professional persons (doctors, dentists, attorneys, accountants, etc.) when such accounts represent amounts owing to them for professional services.
- (H) Loans to affiliated companies and other intercompany receivables of corporations which are not evidenced by a note or similar instrument. See section 11.11(e)(1) for loans secured by a note.
- (I) Accrued rent which is due and payable but not received on or before the valuation date.
- (J) Royalties which are due but not received

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on or before valuation date.

(K) Receivables of banks under retail credit card plans.

(L) Accounts receivable which have a business, commercial or taxable situs in West Virginia, even through such accounts may be owned by a nonresident or foreign corporation. See section 11.11(g) for rule regarding situs.

(M) Loans and other receivables which are not evidenced by a note or similar instrument.

(4) Shares of Stock.

(A) Exemptions.

(1) W. Va. Code § 11-5-1 (1961) provides that "shares of capital stock owned by residents of this State in corporations actually located in other states, and whose property is taxed by the laws of such other state shall not be required to be listed for taxation."

(2) W. Va. Code § 11-5-6 (1933) provides that "[w]hen the property, stock or capital of any company, whether incorporated or not, is assessed to such

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company, no person owning any share, portion or interest therein shall be required to list the same or be assessed with the valuation thereof."

(3) Shares and units sold prior to the date of valuation are not subject to appraisal. However, if the proceeds from such sales are not received before the date of valuation, the person has an account receivable (credit balance) which is subject to appraisal.

(B) The term "stock" includes the following:

(1) Stock of both domestic and foreign corporations.

(2) Unregistered stock, restricted stock, letter stock and stock which is closely held and not traded on the market.

(3) Shares and units of ownership of mutual funds, investment trusts and investment funds, the value of which may not be reduced in whole or in part by reason of the nontaxable or exempt

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status of securities or obligations held in the fund or trust.

(4) Shares and units held in brokerage accounts, including those purchased on margin.

(5) Shares and units held or controlled, or both, by fiduciaries (executors, administrators, pension plans, guardians, etc.) which are reportable by the fiduciary.

(6) Shares of stock owned by corporations in affiliated or subsidiary corporations.

(7) Shares of stock in holding companies, including bank and insurance holding companies.

(8) Shares and units acquired through purchase, gift, inheritance or any other means as of the date of valuation, even if the certificates have not been received and are not in the owner's possession.

(9) Shares and units owned by or registered to residents of West Virginia as

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of the valuation date, even though such certificates may be physically located in another state.

(5) Other Similar Intangibles. -- The term "other similar intangible personal property" means any other evidence of indebtedness that is not a note, bond, bill and account receivable or stock. It includes the following:

- (A) Conditional sales contracts - written agreements whereby title to property sold remains with the seller until paid in full.
- (B) Investment contracts and accumulation plans.
- (C) Land sales contracts.
- (D) Repurchase agreements issued by financial institutions, notwithstanding that such may be secured by tax exempt government securities.

(f) Definitions. -- For the purpose of statewide reappraisal of property for ad valorem property taxes, the following terms shall have the meaning ascribed herein, unless the intention to give a more limited or broader meaning is disclosed by the context in which the term is

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used:

(1) "Bank deposits" means a deposit of money with any person engaged in the business of banking. It includes money on deposit in a checking, time, interest or savings account, and certificates of deposit (including money market certificates and All Savers Certificates). The term "person engaged in the business of banking" means and includes banks, building and loan associations, industrial banks, industrial loan companies, supervised lenders, credit unions and all other similar institutions, whether persons, firms or corporations, which are by law under the jurisdiction and supervision of the West Virginia Commissioner of Banking, the Federal Reserve Board or the United States Comptroller of the Currency.

(2) "Bills receivable" and "accounts receivable" mean debts owed to a person that arise in the normal course of business dealings and are not supported by negotiable paper.

1. Open account. -- Type of credit extended by a seller to buyer which permits buyer to make purchases without a note or security and it is based on an evaluation of the buyer's

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credit. Such account may be mutual, or provide open credit or open-end credit.

(2) Open Credit. -- Line of credit extended up to a certain amount by a merchant, bank or supplier so as to permit borrowings or purchases to such amount without posting security or reestablishing credit limit.

3. Open-end credit. -- Credit cards and "revolving charges" where one can pay a part of what he owes each month on several different purchases.

4. Trade acceptance. -- A trade acceptance means a draft drawn by a seller which is presented for signature (acceptance) to the buyer at the time goods are purchased and which then becomes the equivalent of a note receivable of the seller and the note payable of the buyer.

(3) "Bonds" includes annuity bonds, bearer bonds, callable bonds, chattel mortgage bonds, collateral trust bonds, convertible bonds, corporate bonds, coupon bonds, debenture bonds, general mortgage bonds, general obligation bonds, government bonds, guaranteed bonds, improvement bonds, income bonds, state bonds and subordinate bonds.

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(4) "Business situs" means the state where intangible personal property was acquired, used or otherwise has become localized in the conduct of a business activity so as to come within the protection of this State.

(5) "Cash" includes all United States and foreign currency and coin. Individual coin collections are treated as cash and exempt, unless the collection is being held or maintained for the purpose of future profit. In such case, the collection is valued as tangible personal property. Coin collections of dealers are considered to be inventory and are also valued as tangible personal property.

(6) "Commercial domicile" means the state or other location where a corporation or other business has established its principal office or chief place of business.

(7) "Credit card" means any instrument or device, whether known as a credit card, credit plate, or by any other name, issued with or without a fee by an issuer for the use of the cardholder in obtaining money, goods, services, or any other thing of value.

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(8) "Debenture" means a bond or promissory note backed by the general credit of a corporation and usually is not secured by a mortgage or lien on any specific property.

1. Convertible debenture. -- A debenture which may be changed or converted into some other security (e.g. stock) usually at the option of the holder.
2. Convertible subordinate debenture. -- A debenture which is subject or subordinate to prior payment of other indebtedness but which may be converted into another form of security.
3. Sinking fund debenture. -- A debenture which is secured by periodic payments into a sinking fund, commonly managed by a trustee for purposes of retiring such debt.
4. Subordinate debenture. -- A debenture which is subject to or subordinate to prior payment of other indebtedness.

(9) "Domestic corporation" means any corporation organized and chartered under the laws of West Virginia.

(10) "Evidence of debt" means a written instrument entered into by two or more parties whereby one

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party acknowledges in writing a debt of money as owning or payable to another party.

(11) "Foreign corporation" means any corporation organized and chartered under the laws of another state or foreign county.

(12) "Intangible personal property" or "intangible" property" means personal property which is not in itself valuable, but derives its value from that which it represents.

(13) "Letter of credit" means a letter whereby one person requires some other person to advance money or give credit to a third person, and promises to repay the same to the person making the advancement.

(14) "Money" means and includes cash, personal and business checks, cashiers' checks, certified checks, postal money orders, travelers' checks and express checks, bank credit card (Master Card, Visa, etc.) sales drafts or sales slips held by a merchant or other party for deposit with a bank, and other items commonly thought of and understood to be money. It does not include notes, bonds, bills and accounts receivable, stock and any other similar intangible personal property. See 48 Op.

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Att'y. Gen. 63 (1959); W. Va. Code §§ 11-5-3 (1961), defining "personal property," and 11-8-5 (1961), classifying property for ad valorem property taxation.

(15) "Note" includes circular notes (letters of credit), collateral notes, demand notes, installment notes, joint and several notes, joint notes, mortgage notes, negotiable notes, secured notes, time notes and unsecured notes.

(16) "Other similar intangible personal property" in the context of "notes, bonds, bills and accounts receivable, stock and any other similar intangible personal property" means and includes all other evidence of debt. See Greene Line Terminal Co. v. Martin, 122 W. Va. 483, 10 S.E.2d 901, 906 (1940).

(17) "Property situated in this State" means and includes:

(A) Property having legal situs in this State; or

(B) In the case of a person with a place of business located in this State and authorized to do business in this State and one or more other states of the United States or any

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foreign country:

(i) Any tangible property brought into this State from time to time or otherwise deemed to have situs in this State for purposes of ad valorem property taxation, and

(ii) Any intangible property held by such person, wherever evidenced thereof is situate. W. Va. Code § 11-1A-3(h).

(18) "Stock" means the capital or principal fund of a corporation or joint stock company derived from contributions of subscribers or the sale of shares. "Stock" is distinguishable from "bonds" and, ordinarily from "debentures," in that it gives the right of ownership in part of the assets of the corporation and the right to interest in any surplus after payment of debt. It includes the following: preferred stock, assessable stock, blue-chip stock, bonus stock, callable preferred stock, common stock, control stock, convertible stock, cumulative preferred stock, cumulative stock, donated stock, letter stock, listed stock, nonassessable stock, noncumulative preferred stock, noncumulative stock, nonvoting stock, no

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par stock, participation preferred stock, participation stock, par value stock, penny stock, premium stock, redeemable stock, registered stock, restricted stock, stock options, stock rights, stock warrants, treasury stock, unlisted stock and voting stock.

(18) "Taxable situs" means the state where intangible personal property is subject to taxation.

(19) "Value," "market value" and "true and actual value" mean the price at or for which a particular species of property would sell if it were sold to a willing buyer by a willing seller in an arms-length transaction without either the buyer or the seller being under any compulsion to buy or sell.

See W. Va. Code § 11-1A-3(i).

(g) Situs of Intangibles.

(1) In General. -- All intangible personal property owned by residents of West Virginia is generally considered to have a taxable situs in this State. In addition, intangible property acquired by a nonresident as a result of business activities conducted in West Virginia or otherwise having a business situs in this State, is also deemed to have a taxable situs in this State. The intent of

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this provision is to assure that nonresidents transacting business in this State and availing themselves of the laws of this State, either directly or through an agent, pay the same tax that would be imposed on residents in the same business.

(2) Considerations. -- Criteria applicable in determining whether intangible property has a tax situs in West Virginia includes the following:

(A) All intangible personal property owned by natural persons who are residents of West Virginia is considered to have a taxable situs in this State (regardless of where such intangible property was originally acquired or where it is currently physically located) unless the owner establishes that it has a tax situs in another state and that ad valorem property taxes are actually paid in that other state.

(B) All intangible property held or controlled by an administrator, executor, trustee, guardian, receiver or other fiduciary domiciled in this State is considered to have a taxable situs in this State (regardless of

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where such intangible property was originally acquired or where it is currently located) unless such person establishes that it has a tax situs in another state and that ad valorem property taxes are actually paid in that other state.

(C) All intangible personal property owned by a domestic corporation or by a foreign corporation having its commercial domicile in West Virginia, is considered to have a taxable situs in this State; Provided, that any intangible property of such corporations which (i) has acquired a business situs in another state, and (ii) is lawfully subjected to that state's intangible property tax is not subject to appraisal in West Virginia.

(D) In the case of a foreign corporation having its commercial domicile outside of West Virginia, any intangible personal property acquired in the conduct of business activities carried on in this State, or otherwise having a business situs in this State, is considered to have a taxable situs in West Virginia. Specifically, accounts re-

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ceivable, notes receivable and other evidences of debt of such foreign corporations doing business in West Virginia are considered to have a taxable situs in this State, regardless of where they were approved or evidence thereof is currently located if such debt or debts were created or acquired as a result of any one or more of the following:

- (i) The selling of property in West Virginia by an officer, employee or agent having or reporting to an office or other business location in this State.
- (ii) The delivery of property in West Virginia from a factory, warehouse or other stock of goods located in this State.
- (iii) Services performed in West Virginia by an officer, employee or agent having or reporting to an office or other business location in this State.
- (iv) The lending of money in West Virginia by an officer, employee or agent

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having or reporting to an office or
other business location in this State.

(h) Valuation of Class I Intangibles. -- Class I intangible personal property shall be valued in the following manner in order to assure that the appraised value of such property is determined in an "equal" and "uniform" manner throughout this State.

(1) Notes.

(A) Valuation of notes unsecured by realty. --

The value of a note is presumed to be the amount of the unpaid principal as of the valuation date. The taxpayer may establish a lesser value by submitting to the Tax Commissioner satisfactory evidence that the note is worth less than the unpaid amount because of the debtor's insolvency or similar reason.

(B) Valuation of notes secured by realty. --

All notes for the payment of money which are secured by a written lien upon West Virginia real property shall be valued at the principal amount of the indebtedness evidenced by the note. The principal amount of indebtedness shall equal the amount of the loan financed, including any miscellaneous charges

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included in the amount financed, but shall not include unearned and unaccrued interest over the term of the loan. Such value may be reduced if the taxpayer submits to the Tax Commissioner satisfactory evidence that the note's face value is not the market value of the note.

(C) Accrued interest. -- Any accrued interest due on a note that is not paid on or before the valuation date, shall be included when determining the appraised value of the note.

(D) Burden of proof. -- The burden of proof shall be on the person seeking a lower or higher value than that determined under the preceding paragraphs to show by cogent evidence that such value is not the market value of the note.

(2) Bonds and Debentures.

(A) The appraised value of bonds and debentures which are listed and traded on a security exchange is the closing price of such bonds and debentures as quoted by the exchange on the valuation date.

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(B) The appraised value of bonds and debentures traded over-the-counter is the closing bid price as quoted by the over-the-counter market on the valuation date.

(C) If bonds and debentures are not regularly traded and quoted values are not available, the appraised value is the amount of the unpaid principal or face amount of the bond or debenture, unless cogent evidence is furnished to prove that the actual value is different than that amount.

(D) Any accrued interest due on bonds and debentures should be included in determining their appraised value.

(E) The burden of proof shall be on the person seeking a lower or higher value than that determined under the preceding paragraphs to show by cogent evidence that such value is not the market value of the bond or debenture.

(F) When the valuation date is not a business day, then the closing price on the last business day preceding the valuation date shall be the appraised value.

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(F) The value of debt obligations of the State of West Virginia and its political subdivisions, the United States of America, and agencies of the State of West Virginia and the United States of America, shall be exempt from taxation, unless the issuing authority consents to the taxation of its obligations.

(3) Bills and Accounts Receivable.

(A) The appraised value of all accounts receivable is the face value of such receivables as reflected on the books and records of the owner.

(B) In determining the face value of accounts receivable, a reasonable deduction will be allowed for uncollectable accounts, provided such deduction is based on generally accepted accounting principles.

(C) The appraised value of any account receivable which is in dispute or which is due from a party whose solvency is doubtful shall be estimated at its probable value.

(D) Any accrued interest due on accounts receivable should be included in determining

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the appraised value of such receivables.

(E) The burden of proof shall be on the person seeking a lower or higher value than that determined under the preceding paragraphs to show by cogent evidence that such value is not the market value of the bill or account receivable.

(4) Shares of Stock. (Except bank stock.)

(A) The appraised value of stocks listed and traded on a stock exchange is the closing price of such stocks on the valuation date as quoted by the stock exchange.

(B) The appraised value of stocks traded over-the-counter is the closing "bid price" on the valuation date as quoted by over-the-counter security dealers.

(C) If stocks are not listed or regularly traded on the open market, the appraised value shall be appraised by determining an average (weighted by the volume of sales) between the highest and lowest prices in arms-length sales during a reasonable period before the valuation date.

(D) If the appraised value of stocks cannot

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be established by use of (A), (B) or (C) above, an appraised value should be determined in accordance with generally accepted appraisal principles, giving consideration to such factors as adjusted book value, corporate earnings, nature and history of the business, dividend record, and comparison with the market price of stocks of comparable businesses.

(E) Generally no reduction is allowed in determining the appraised value of shares of stock because they are unregistered or restricted as to right of sale. However, there may be situations where some discount should be allowed in order to determine the marked value of the stock. The burden of proof shall be on the owner or holder thereof to prove by cogent evidence that a discount should be allowed and what the amount thereof should be.

(F) The so-called "blockage rule" (a reduction in the value of shares of stock due to the number or volume of shares owned) will generally not be used in establishing ap-

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praisal value. However, there may be situations where some discount should be allowed in order to determine the market value of the stock. The burden of proof shall be on the owner or holder thereof to show by cogent evidence that a discount should be allowed and the amount of the discount.

(G) The appraised value of shares of stock will generally not be increased or decreased because such shares represent either a majority or minority interest. However, there may be situations where some discount should be allowed in order to determine the market value of the stock. The burden of proof shall be on the owner or holder thereof to prove by cogent evidence that a discount should be allowed and the amount of the discount.

(H) If listed market values or quotations are not used to compute the appraisal value of shares of stock, a statement should be attached to the property tax report explaining the method used in appraising or determining the appraised value of such stocks.

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(I) Indebtedness incurred to purchase shares of stock may not be considered as a deduction in determining the appraised value of such shares.

(J) The burden of proof shall be on the person seeking a lower or higher value than that determined under the preceding paragraphs to show by cogent evidence that such value is not the market value of the stock.

(5) Shares of Bank Stock.

(A) West Virginia Bank Stock. W. Va. Code § 11-3-14 (1933) requires that the value of shares of stock in a West Virginia banking institution, national banking association or industrial loan company shall ascertained according to the best information which the appraiser may obtain. Valuation of such stock shall reflect consideration of the method set forth in § 11.11(h)(4), with the following exception:

(i) A proportionate share of the value of real estate owned by a West Virginia banking institution, national banking or industrial loan company shall be deducted

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from the total value of the bank stock (determined before any decreasing modification is made). Real estate shall be valued in the same manner as other commercial real property.

(ii) In order to eliminate the direct or indirect effect which debt obligations of the United States that are exempt from property taxes have on the value of bank stock, a proportionate share of the value of such debt obligation of the United States, shall be deducted from the total value of the bank stock (determined before any decreasing modification is made).

(B) Out-of-State Bank Stock.

(1) Bank stock in banks, banking institutions and banking associations held by West Virginia residents representing ownership in banks located outside the State of West Virginia shall be valued in the same manner as stock held in West Virginia banks. See Section 11.11(h)(5)(A).

(2) Whenever the stock represents

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ownership in banks located outside the State of West Virginia, and such stock is subject to intangible personal property tax by another state, with such taxes actually paid to such other state, the stock shall not be valued for taxation in this State.

- (6) Stock or Capital of West Virginia Building and Loan Associations and Savings and Loan Associations. -- W. Va. Code § 11-3-14a

(1959) requires that the capital of West Virginia building and loan and savings and loan associations, and federal savings and loan associations, as well as the capital of such associations located in other states, shall be valued in the same manner as out-of-state bank stock See Section 11.11(h)(5).

- (7) Other Similar Intangible Personal Property.

(A) The appraisal value of "other similar intangible personal property" for which specific valuation procedures are not provided shall be determined in accordance with generally accepted appraisal principles. Established market values shall be used for

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intangible property regularly traded (e.g. stock, bonds etc.). Otherwise, factors customarily considered in determining intrinsic value shall be used.

(B) Burden of proof. -- The burden of proof shall be on the person seeking a lower or higher value than that determined under the preceding paragraph to show by cogent evidence that such value is not the market value of the property.

APPENDIX I.

West Virginia Code Provisions
Exempting Government
Obligations and Securities
from Property Taxes

The following is a list of forty-six statutes which exempt specific bond issues from ad valorem property taxation.

- 5-6-8 Bonds issued by the State Building Commission for the purpose of financing the acquisition of land, construction, equipping and furnishing of a building or buildings, together with incidental approaches, structures and facilities.
- 7-3-7 Bonds issued by county courts to acquire real estate for, construct, equip, furnish and maintain a courthouse, hospital, or other public building or jail or regional correction center.
- 7-3-14 Revenue bonds issued by county courts to own, equip, furnish, operate, lease, improve and extend a public hospital, clinic, long-term care facility and other related facilities.
- 7-11-2 Bond notes, debentures, and other evidences of indebtedness of any parks and recreation commission created by a county commission.
- 7-12-10 Bonds, notes, debentures, and other evidence of indebtedness of county development authorities.
- 7-15-13 Evidences of indebtedness of county authorities.
- 8-16-11 Revenue bonds of municipal public works or boards issued for the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, maintenance, repair (including replacements) and operation of jails, jail facilities, municipal buildings, police stations, fire stations, li-

braries, museums, other public buildings, incinerator plants, land fill or other garbage disposal systems, hospitals, piers, docks, terminals, airports, drainage systems, flood control systems, flood walls, culverts, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), public markets, cemeteries, motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other facilities deemed necessary, appropriate useful, convenient or incidental to the regulation, control and parking of motor vehicles), stadiums, gymnasiums, sports arenas, auditoriums, public recreation centers, public recreation parks, swimming pools, roller skating rinks, ice skating rinks, tennis courts, golf courses, polo grounds, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, widening or otherwise improving of any street, avenue, road, alley or way, or the building or renewing of sidewalks.

- 8-19-4 Revenue bonds issued by a municipality for the acquisition, construction, improvement or maintenance of a public waterworks system.
- 8-20-5 Revenue bonds issued by a municipality to acquire, construct, establish, equip, repair, maintain and operate a combined waterworks and sewerage system.

- 8-27-20 Revenue bonds and other evidences of indebtedness of municipal and/or county urban mass transportation system authorities.
- 8-29-13 Bonds, notes, debentures and other evidences of indebtedness of regional airport development authorities.
- 8-29A-13 Bonds, notes, debentures and other evidences of indebtedness of county airport authorities.
- 8-33-7 Bonds, notes, debentures and other evidences of indebtedness of municipal, county, and municipal county building commissions.
- 10-2A-10 Revenue bonds issued by county courts, municipal corporations or county boards of education to establish, construct, acquire, extend, equip and own, maintain and operate athletic fields of all types, stadiums, gymnasiums, field houses, and all other types of athletic establishments.
- 11-3-9 Bonds and other evidences of indebtedness sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings used exclusively for divine worship, or for the purpose of paying indebtedness thereon.
- 13-1-33 Bonds issued by the State of West Virginia or any political subdivision thereof for the purpose of acquiring, constructing and erecting, enlarging,

extending, reconstructing, improving or furnishing any building, library, museum, buildings for educational purposes, recreational parks, civic arenas, auditoriums, exhibition halls, theaters and colleges.

13-2-8 Refunding bonds issued by county courts, municipal corporations, or boards of education.

13-2A-10 Refunding bonds issued by any city, town, county, public service agencies, boards, commissions or departments having power to issue revenue obligations for the purpose of refinancing any work, undertaking, or project which the public body is or may hereafter be authorized to construct and from which the public body has heretofore derived or may thereafter derive revenues, including all improvements, betterments, extensions and replacements thereto, and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto.

13-2C-15 Revenue bonds issued by counties or municipalities to defray the cost of acquisition by construction, purchase, lease or otherwise an industrial or commercial development project including any buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in

land, water rights, franchises, machinery, equipment, furnishings, landscaping, utilities, railroad spurs and sidings, parking facilities, parking wharfs, approaches and roadways or any number or combination of the foregoing necessary or desirable in connection therewith or incidental thereto and includes, without limiting the generality of the foregoing, hotels and motels and related facilities, nursing homes and other health care facilities, facilities for participatory or spectator sports, conventions or trade show facilities, airport facilities, shopping centers, office buildings, residential real property for family units, mass commuting facilities, and any site, structure, building, industrial park, water dock, wharf or port facilities, fixtures, machinery, equipment and related facility, including real and personal property, or any combination thereof, suitable as a factory, mill or shop, or processing, assembly, manufacturing or fabricating project, or warehouse or distribution facility, or facilities for the extraction, production or distribution of mineral resources and related facilities, or sewage or solid waste disposal facilities, or facilities for the local furnishing of electric energy or gas, or facilities for the furnishing of

water, if available on reasonable demand to members of the general public or storage or training facilities related to any of the foregoing, or research or development facility or pollution abatement or control facility and includes the reconstruction, modernization and modification of any existing industrial project for the abatement or control of industrial pollution.

13-2D-12 Any revenue bond issued by a county court to acquire, construct, equip, improve, maintain or operate a public facility for the taking off and landing of airplanes, and all such appurtenances and facilities usual and convenient in connection with such facility.

13-2E-12 Any refunding bond issued by any city, town, village, county, public service district, sanitary district, political subdivision or any other similar public entity now or hereafter created, and the State of West Virginia acting through any of its agencies, boards, commissions or departments to finance any work, undertaking, or project which the public body is or may hereafter be authorized to acquire or construct and from which the public body has heretofore derived or may hereafter derive revenues, for the refinancing of which enterprise refunding bonds are issued under

this article, and such enterprise shall include all improvements, betterments, extensions and replacements thereto, and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto.

- 15-6-18 Revenue bonds issued by the State Armory Board for the acquisition, construction and maintenance of armories, arsenals, ranges, campgrounds, service centers, training areas, concentration areas, and warehouses used for the training, administration, operations, and maintenance of the national guard.
- 16-13-10 Revenue bonds issued by a municipality or sanitary district for the acquisition, construction and maintenance of public sewage collection and treatment systems.
- 16-13-22f Refunding bonds issued by municipalities or sanitary districts to pay or discharge its outstanding revenue bonds.
- 16-13A-21 Bonds issued by public service districts for the acquisition, construction and maintenance of public service properties providing water or sewerage services.
- 16-15-14 Bonds issued by a county or municipal housing authority for demolition and slum clearance, the

acquisition, repair and/or construction of low cost housing, stores, offices and community facilities.

- 16-18-10 Bonds and refunding bonds issued by the state or any political subdivision thereof for the purpose of acquiring slum or blighted areas and redeveloping them.
- 16-26-10 Revenue bonds issued by the West Virginia Solid Waste Disposal Authority for the purpose of reconstruction, enlargement, improvement, furnishing and equipping a solid waste disposal project.
- 17-16A-14 Revenue bonds issued by the West Virginia Turnpike Commission to finance construction of any express highway or turnpike.
- 17-17-19 Revenue bonds issued by the West Virginia Commission of Highways for corporations formed to acquire, construct, and maintain bridges.
- 18-11-25 Bonds issued by the West Virginia Board of Regents for the construction of parking facilities at West Virginia University.
- 18-11A-7 Bonds issued by the West Virginia University Board of Governors for capital improvements at West Virginia University.
- 18-11B-11 Revenue bonds, revenue refunding bonds and bonds issued for combined purposes, issued by the West Virginia University Board of Governors for university facilities, buildings and structures.

- 18-12A-7 Revenue bonds issued by the West Virginia Board of Regents for capital improvements at Marshall University.
- 18-12B-4 Revenue bonds, revenue refunding bonds and bonds issued for combined purposes issued by the West Virginia Board of Regents for capital improvements on a system basis at state institutions of higher learning.
- 18-23-16 Bonds issued by governing boards of West Virginia's institutions of higher education to provide, construct, erect, improve, equip, maintain, and operate gymnasiums, stadia, dormitories, homes, refectories, swimming pools, or such other structures or buildings for students, teachers, officers and employees at the various state institutions of higher education.
- 18-24-6 Bonds issued by the West Virginia Board of Regents for the acquisition, construction, maintenance, improvement and furnishing of student union buildings.
- 18-27-22 Income only from bonds issued by the Board of Regents to fund education loan financing programs.
- 20-4-5 Revenue bonds issued by the Director of the Department of Natural Resources to acquire funds to develop the state park and recreation system.

- 20-5C-17 Revenue and refunding bonds issued by the West Virginia Water Development Authority to acquire or construct any public water or waste water facility.
- 29-8-10 Revenue bonds issued by the Blennerhassett Historical Park Commission to develop Blennerhassett Island and related locations in Wood County into a major educational, cultural and recreational attraction.
- 29-18-19 Revenue or refunding bonds issued by the West Virginia Railroad maintenance authority to finance railroad maintenance projects.
- 31-15-20 Bonds issued by the West Virginia Economic Development Authority to establish or improve an industrial subdivision project.
- 31-18-18 Bonds issued by the West Virginia Housing Development Fund for the purpose of financing land development and residential housing.
- 31-19-20 Bonds issued by the West Virginia Community Development Authority for the purpose of raising revenue to purchase the bonds of local government units.

Section 11.12(a)

11.12. Valuation of Public Utility Property.

(a) General. -- These regulations establish general valuation methods for the appraisal of the various types 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.

(b) Definition.

(1) Bands of Investment Technique. -- A synthesis of capital components used in financing an investment.

(2) Capitalization Rate. -- A rate, used to convert an estimate of income to an estimate of market value.

(3) Cost Approach. -- 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 always be used to value public utility operating property, however, when such original cost is not available, replacement cost or reproduction cost may be considered.

(4) Economic Obsolescence. -- A loss in value of a property arising from factors such as changes

Section 11.12(b)

in use, legislation that restricts or impairs property rights, or changes in supply and demand relationships.

(5) Fair Market Value. -- The highest price in terms of more 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.

(6) Final Assessed Values. -- Values established by the Board of Public Works as required by W. Va. Code § 11-6-11.

(7) Functional Obsolescence. -- A loss in value of a property due to changes in style, taste, or technology.

(8) Income Approach. -- The appraisal process of discounting an estimate of future benefits into an expression of present worth.

(9) Market Data Approach. -- The appraisal process of examining sales data and translating such data into an estimate of present worth.

(10) Market Comparables Technique. -- A process of reviewing recently sold properties that are

Section 11.12(b)

similar in important respects to a subject property in order to arrive at an estimate of value.

(11) Original Cost. -- The initial cost paid for constructing or acquiring property.

(12) Physical Deterioration. -- A loss in value due to wear and tear in service.

(13) Public Service Corporation. -- Business entities contemplated by of W. Va. Code § 11-6-1 et. seq.

(14) Rate Base. -- That group of accounts or derivatives thereof, from the Uniform System of Accounts, on which a public utility is allowed a return on investment.

(15) Regulation. -- The process wherein fees charged for public utility services are reviewed by applicable federal and state regulatory bodies.

(16) Replacement Cost. -- 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.

(17) Reproduction Cost -- The cost, including material, labor, and overhead, that would be

Section 11.12(b)

incurred in constructing an improvement having exactly the same characteristics as the improvement in question.

(18) Return on Investment. -- A margin of profit generally expressed as a percentage of investment capital.

(19) Stock and Debt Technique. -- A process of reviewing market trading prices of securities in order to arrive at an estimate of value.

(20) Tentative Assessments. -- Property valuation estimates furnished by the Tax Commissioner to the Board of Public Works in accordance with W. Va. Code § 11-6-9.

(21) Uniform System of Accounts. -- The most current system of accounting developed and required by state and federal regulatory bodies.

(22) Unit Rule -- An appraisal of an integrated property as a whole without any reference to the values of its component parts.

(23) Operating Property. -- 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

Section 11.12(c)

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.

(c) Situs.

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

(2) When the income approach is used, the unit of value shall be allocated to the State of West Virginia using gross operating plant data after which

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

Section 11.12(d)

(d) Valuation of Operating Public Utility Property.

(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.

(2) Generally Accepted Appraisal Methods. -- In determining tentative assessments the Tax Commissioner will consider, and use where applicable, three 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.

(A) Cost Approach. -- Recognizing that public service corporations are predominantly cost regulated, when the cost approach is used in the valuation process, original cost less applicable depreciation will be employed. In applying the cost approach, the Tax Commis-

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sioner will consider three types of depreciation; (a) physical deterioration, (b) functional obsolescence, and (c) economic obsolescence.

(B) 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, 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.

(C) 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

Section 11.12(d)

stocks and bonds that enable reasonable valuation estimates to be made.

(D) Correlation. -- 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.

(3) Classifications of Public utility and Common Carrier Operating Properties.

(A) 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.

(B) 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

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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.

(C) 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.

(D) 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

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of Accounts prescribed for Telephone Utilities shall be used.

(E) 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 for Wire-Telegraph and Ocean-Cable Carriers shall be used.

(F) Airline Companies. -- Operating property for air carriers shall primarily include such properties as are considered as operating property by the Civil Aeronautics Board (CAB). 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.

(G) Interstate Motor Carriers. -- Operating property for interstate motor carriers shall primarily include such properties as are

Section 11.12(d)

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.

(H) Interstate Railroads. -- Operating property for interstate railroads 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 Railroad Companies shall be used.

(I) Intrastate Railroads. -- Operating property for intrastate railroads shall primarily include such properties as are considered by the West Virginia Public Service Commission (PSC) as operating property. In determining which properties are properly

Section 11.12(d)

included as operating property, the most recent Uniform System of Accounts for Railroad Companies as prescribed by the Interstate Commerce Commission shall be used.

(J) 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.

(K) 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

Section 11.12(d)

for Class A and B, and Class C and D water utilities.

(L) 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.

(M) Carline Companies. -- Operating property for carline companies shall include consideration of Rolling Stock used in transportation of freight or passengers.

(N) 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

Section 11.12(d)

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.

(O) 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.

Section 11.13(a)

11.13. Valuation of Vehicles, Watercraft and
 Aircraft.

(a) General. -- This regulation provides the absolute methodology for valuing all vehicles, watercraft and aircraft.

(b) Definitions.

(1) Vehicles. -- The term "vehicle" shall include, but is not limited to, automobiles, trucks, truck tractors, trailers, motor homes, campers, motorcycles, motorbikes and mopeds.

(2) Assessment Day. -- The term "assessment day" means the first day of July of each assessment year for ad valorem property tax purposes.

(c) Valuation of Automobiles.

(1) The Tax Commissioner shall merge a computer listing of all passenger automobiles registered in the State of West Virginia by owner of record on the assessment day of each year, with a computer tape listing the values of all vehicles as reflected by a current National Automobile Dealers' Association (NADA) appraisal guide. The result of this program will be a list of motor vehicle owners on assessment day for each county, together

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with the motor vehicles they own, and an exact appraised value for each motor vehicle. This appraised value will be the base retail value as listed by the NADA appraisal guide.

(2) The county assessor shall review the annual appraisal list of motor vehicles. When a motor vehicle which is subject to assessment has been omitted from the appraisal list, the assessor shall use the current NADA appraisal guide furnished by the Tax Commissioner for the month of July of the current assessment year to ascertain the base retail value of the vehicle.

(3) Vehicle models over eighteen years old which are not covered by NADA appraisal guides shall be valued by the assessor in the following manner:

(A) Vehicles displaying "antique auto" license plates shall be individually appraised using the best information available.

(B) All other vehicles over eighteen years old will be valued at a standard value of \$200.

(d) Valuation of Trucks, Recreational Vehicles, Motorcycles, Mopeds and Other Vehicles.

(1) The local assessor shall use a current ap-

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praisal guide published by NADA, or other recognized authority, and furnished by the Tax Commissioner for the month of July of the current assessment year to ascertain the base retail value of such vehicles.

(2) Older vehicle models in this classification which are excluded from recognized appraisal guides because of their age, shall have their last appraised value depreciated by ten percent (10%) per year until the value reaches two hundred dollars (\$200). Thereafter, the appraised value will remain constant for so long as the vehicle is owned by the taxpayer.

(e) Valuation of Watercraft. -- The Tax Commissioner shall annually purchase a nationally recognized comprehensive price listing service for watercraft such as power boats, bass boats, canoes, row boats, pontoon boats, cabin cruisers, etc. The Tax Commissioner shall supply this listing to each county assessor beginning July 1, 1985, for use in determining the appraised value of watercraft.

(f) Valuation of Airplanes.

(1) The Tax Commissioner shall purchase and furnish to county assessors an aircraft appraisal guide from a nationally recognized authority. The

Section 11.13(f)

Tax Commissioner shall supply this listing to each county assessor beginning July 1, 1985, for use in determining the appraised value of the aircraft.

(2) The local assessors shall determine the appraised value of special radio equipment and radar and other avionic equipment purchased and installed in the aircraft. The total appraised value of the aircraft shall be determined based on the retail value of both the aircraft and its navigational equipment.

Section 11.14(a)

11.14. Taxpayer Returns.

(a) The Tax Commissioner shall print taxpayer return forms. Such forms shall be furnished to each assessor who will distribute said forms to taxpayers for completion and return.

(b) 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.

(c) Taxpayers reporting coal, oil, natural gas, timber, and other natural resources, properties, and all banks and savings and loan associations shall prepare property tax returns in duplicate. One copy shall be filed with the assessor of the county wherein the property lies; the other copy shall be filed with the State Tax Commissioner, P. O. Drawer 2389, State Capitol, Charleston, West Virginia 25305.

(e) All other taxpayers shall prepare one copy of appropriate property tax returns and file it with the assessor of the county wherein the real property lies, or where the taxpayer lives when reporting personal property.

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

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(g) All other property appraisal returns required by this rule shall be filed no later than November 1st of each year.

(h) The Tax Commissioner, for good cause shown, may grant an extension of filing deadlines. No assessor may grant such an extension of a deadline.

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State Tax Department of West Virginia

Charleston 25305

HERSCHEL H. ROSE III
COMMISSIONER

June 28, 1984

Honorable A. James Manchin
Secretary of State
State Capitol, Suite 157-K
Charleston, West Virginia 25305

Dear Mr. Manchin:

On March 13, 1984, we filed in the State Register two copies of finally promulgated legislative rules regarding the appraisal of property for periodic statewide reappraisals for ad valorem property tax purposes. These regulations are cited as West Virginia Legislative Regulations 11-1A, Series 1A (effective April 12, 1984). These regulations were filed pursuant to the authority of West Virginia Code § 64-2-11(1a)(11) which was added by Committee Substitute for Senate Bill No. 425 which took effect on March 10, 1984.

The above regulations required that on or before March 31, 1984, certain information be filed in the State Register relating to certain factors in the valuation of coal and other minor mineral properties, and that on or before April 30, 1984, certain information be filed in the State Register relating to certain factors in the valuation of oil and natural gas properties. On those dates, two copies of each required report was filed.

Also as part of the regulations and the reports, the Tax Commissioner, after review of the reports and public comments on the reports, is required, on or before July 1, 1984, to file in the State Register a final report on the factors to be used in valuing coal, limestone, sandstone, sand and gravel, clay and shale, salt, oil and natural gas properties. Attached, therefore, please find the final report for the factors to be used in the reappraisal.

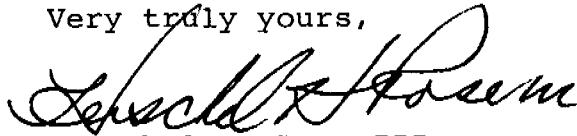
We note that under the regulations cited above, the information contained in the attachments was to be filed on or before July 1, 1984, which was a Sunday. The provisions of West Virginia Code § 2-2-2 provide in pertinent part that when any act is to be done on any particular day of the month or within any period

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE July 2, 1984
Administrative Law Division

Honorable A. James Manchin
Page Two
June 28, 1984

of time prescribed or allowed, that act shall be timely done if it is done on the next day that is not a Saturday, Sunday or legal holiday. In accordance with West Virginia Code § 2-2-2, this filing today is timely.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Herschel H. Rose III".

Herschel H. Rose III
State Tax Commissioner

HHRIII/dht

Enclosure

I. FACTORS FOR THE VALUATION OF COAL PROPERTIES

A. Capitalization Rate: 17.20%

B. Multiplier Factors: (mid-year table for 17.20%)

<u>Year</u>	-	<u>Factor</u>	<u>Year</u>	-	<u>Factor</u>	<u>Year</u>	-	<u>Factor</u>
15	=	5.712	10	=	5.007	5	=	3.448
14	=	5.612	9	=	4.785	4	=	2.958
13	=	5.495	8	=	4.526	3	=	2.384
12	=	5.357	7	=	4.222	2	=	1.712
11	=	5.196	6	=	3.865	1	=	0.924

C. Royalty Rates:

Deep mine - Steam coal = \$1.39 per ton

Deep mine - Metallurgical coal = \$2.20 per ton

Surface mine - Steam coal = \$1.67 per ton

Surface mine - Metallurgical coal = \$2.64 per ton

D. Inactive Reserve Values:

Region 1 = \$240.00 per acre

Region 2 = \$135.00 per acre

Region 3 = \$240.00 per acre

Region 4 = \$240.00 per acre

Region 5 = \$240.00 per acre

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 7-2-84
Administrative Law Division

II. FACTORS FOR THE VALUATION OF OTHER NATURAL RESOURCE PROPERTIES

A. Capitalization Rate: 17.20%

B. Multiplier Factors: (mid-year table for 17.20%)

<u>Year</u>	-	<u>Factor</u>	<u>Year</u>	-	<u>Factor</u>	<u>Year</u>	-	<u>Factor</u>
15	=	5.712	10	=	5.007	5	=	3.448
14	=	5.612	9	=	4.785	4	=	2.958
13	=	5.495	8	=	4.526	3	=	2.384
12	=	5.357	7	=	4.222	2	=	1.712
11	=	5.196	6	=	3.865	1	=	0.924

C. Royalty Rates:

<u>Natural Resource</u>	<u>Deep</u>	<u>Surface/Auger</u>
Limestone	\$0.12/ton	\$0.14/ton
Sandstone	\$0.10/ton	\$0.10/ton
Clay and Shale	\$0.06/ton	\$0.07/ton
Sand and Gravel	\$ --	\$0.10/ton
Salt	\$0.03/ton	\$ --

D. Inactive Reserve Values:

Limestone	=	\$1.00/AC
Sandstone	=	\$1.00/AC
Clay and Shale	=	\$1.00/AC
Sand and Gravel	=	\$1.00/AC
Salt	=	\$1.00/AC

III. FACTORS FOR THE VALUATION OF OIL PROPERTY

A. Multipliers:

<u>Flush Production</u>	<u>Working Interest</u>	<u>Royalty Interest</u>
0 to .750 bbls/day	\$ 5,702	\$12,902
.751 to 2.000 bbls/day	\$11,522	\$22,814
more than 2.000 bbls/day	\$17,775	\$25,413

<u>Settled Production</u>	<u>Working Interest</u>	<u>Royalty Interest</u>
0 to .750 bbls/day	\$13,033	\$33,306
.751 to 2.000 bbls/day	\$22,456	\$36,488
more than 2.000 bbls/day	\$29,711	\$37,641

B. Personal Property - Oil Producing Property:

Personal property used in conjunction with oil producing property will be appraised giving primary consideration to the replacement cost of the machinery, equipment, material and supplies. Depreciation will be applied to the replacement cost based upon the industry as developed through a review of market data.

C. Assigned Oil Reserve Property Values:

Region 1	=	\$16.00/AC
Region 2	=	\$ 9.00/AC
Region 3	=	\$12.00/AC
Region 4	=	\$10.00/AC
Region 5	=	\$12.00/AC
Region 6	=	\$ 7.00/AC

IV. FACTORS FOR THE VALUATION OF NATURAL GAS

A. Multipliers:

	<u>Working Interest</u>	<u>Royalty Intere</u>
Flush Production	2.94	3.26
Settled Production	3.68	4.85

B. Personal Property - Natural Gas Property:

Personal property used in conjunction with natural gas producing property will be appraised giving primary consideration to the replacement cost of the machinery, equipment, material and supplies. Depreciation will be applied to the replacement cost based upon the industry as developed through a review of market data.

C. Assigned Natural Gas Reserve Property Values:

Region 1	=	\$16.00/AC
Region 2	=	\$ 9.00/AC
Region 3	=	\$12.00/AC
Region 4	=	\$10.00/AC
Region 5	=	\$12.00/AC
Region 6	=	\$ 7.00/AC



State Tax Department
of West Virginia

Charleston 25305

HERSCHEL H. ROSE III
TAX COMMISSIONER

JOHN M. FARMER
ASSISTANT COMMISSIONER

GARY A. GORRELL
DEPUTY COMMISSIONER

Telephone
(304)348-2501

JOHN D. ROCKEFELLER IV
GOVERNOR

January 5, 1984

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

Dear Mr. Manchin:

Pursuant to the provisions of W. Va. Code § 29A-3-9 (1982), I hereby submit two (2) copies of the approved proposed legislative rule for valuing certain species of property during the statewide reappraisal.

In conformity with W. Va. Code § 29A-3-11 (1982), copies of this rule are being submitted to the Legislative Rule-Making Review Committee for its review and submission to the Legislature.

Very truly yours,

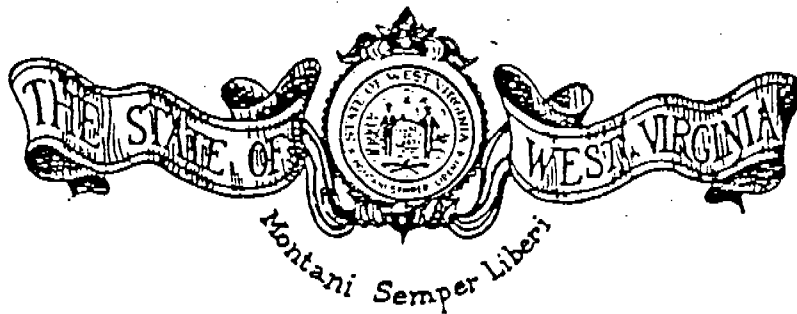
Herschel H. Rose III
State Tax Commissioner

HHR/dse

cc: Honorable Robert R. Nelson
Honorable Robert C. Chambers

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE Jan. 5, 1984
Administrative Law Division



OFFICE OF THE SECRETARY OF STATE

A. JAMES MANCHIN

CHARLESTON 25305

THE STATE CAPITOL

STATE REGISTER FILING

ROBERT W. JACKSON
DEPUTY SECRETARY OF STATE
CORPORATE AFFAIRS

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

Tax Department, hereby submit to records in
the State Register on 8 1/2 x 11" two (2) copies of

- (X) 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;
- () Emergency rules and regulations
- (X) Legislative () Procedural () Interpretive regulations
- (X) other - specify Approved proposed legislative rule.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE Jan. 5, 1984
Administrative Law Division

This filing pertains to

CHAPTER 11 ARTICLE 1A SECTION 11 of the
West Virginia Code, 1931, as amended.

SERIES 1A, SECTION(s) 1 and 11 PAGE NO. _____ of the
Administrative Code.

ADMINISTRATIVE CODE

January 5, 1984
Date Submitted

Herschel H. Rose III
Signature of Person Authorizing
this Filing



State Tax Department
of West Virginia

JOHN D. ROCKEFELLER IV
GOVERNOR

Charleston 25305

HERSCHEL H. ROSE III
TAX COMMISSIONER

JOHN M. FARMER
ASSISTANT COMMISSIONER

GARY A. GORRELL
DEPUTY COMMISSIONER

Telephone
(304)348-2501

FISCAL NOTE

Re: Fiscal note to proposed W. Va. Leg. Reg. 11-1A,
Ser. 1A (1984).

The purpose of these proposed legislative regulations is to clarify and implement W. Va. Code § 11-1A-11 which requires the tax commissioner to promulgate a legislative rule describing the methods by which all real and personal property except residential and farm surface real property will be appraised during the statewide reappraisal.

In compliance with W. Va. Code § 29A-3-4, the itemized cost of implementing these proposed amendments as they relate to this State and to persons affected by these rules and regulations is as follows.

A. Cost to State.

The administrative costs associated with implementing these proposed legislative regulations are projected to be \$440,190.

B. Cost to Local Governments.

The administrative costs associated with implementing these proposed legislative regulations are projected to be \$255,000.

C. Cost to Taxpayers.

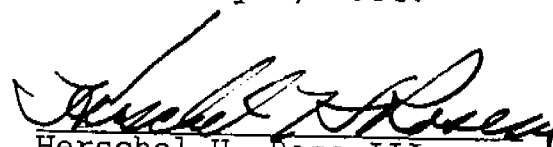
The costs to taxpayers associated with implementing these proposed legislative regulations will be nominal.

Submitted to the State Register on September 1, 1983,
in compliance with W. Va. Code § 29A-3-5 and § 29A-3-9.
Refiled on November 18, 1983, and January 5, 1984.

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE Jan. 5, 1984

Administrative Law Division


Herschel H. Rose III
State Tax Commissioner

8/31/83

ADMINISTRATIVE COSTS DUE
TO IMPLEMENTATION OF
REGULATIONS FILED SEPTEMBER 1, 1983

PERSONAL SERVICES

(1) Clerk (Motor Vehicles, Watercraft, Aircraft 6 mos. @ \$635)	\$ 3,810
(1) Clerk (Intangibles 12 mos. @ \$635)	7,620
(20) Clerks (Misc. 12 mos. @ \$635)	152,400
(10) Data Entry Clerks (Night Shift - 12 mos. @ \$635)	76,200

\$240,030

OTHER EXPENSES

Computer Services

--Merging Tape (Motor Vehicles)	\$ 50,000
--Data Entry, file maintenance, CPU time, print cost, storage cost (Tape and/or disk) (Natural Resources & Intangibles - 1 million records)	30,000

\$ 80,000

Forms

Printing Cost

--Intangibles (1,200,000 forms)	
--Natural Resources (800,000 forms)	\$ 50,000

Delivery	\$ 1,400
----------	----------

\$ 51,400

Intangibles

(56) Boats	\$ 1,500
(56) Heavy Trucks	1,500
Mobile homes	1,500
Motorcycles	1,500
Recreational Vehicles	1,500
Intangibles	2,500

\$ 10,000

	\$ 1,650
	2,310
	400
(Cabinets and Shelves)	25,000
	1,000
	2,000

Office Space

3,000 sq. feet at \$8
@ 12 mos.

\$ 24,000

\$ 24,000

Telephone Fees

\$ 2,400

\$ 2,400

Total

440,190

ADDITIONAL COST TO ASSESSORS

Postage (1.5 million forms x 17¢)

\$255,000

NOTE: Unless otherwise specified, these figures reflect administrative costs projected to be incurred by the Local Government Relations Division of the State Tax Department during the first year of implementation of property tax regulations filed September 1, 1983.

APPROVED PROPOSED
WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX DEPARTMENT

LEGISLATIVE

Chapter 11-1A
Series 1A
(1984)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE Jan. 5, 1984
Administrative Law Division

Subject: Appraisal of Property for Periodic Statewide
Reappraisals for Ad Valorem Property Tax Purposes.

Filed January 5, 1984

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APPROVED PROPOSED
WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

LEGISLATIVE

Chapter 11-1A
Series IA
(1984)

Subject: Appraisal of Property for Periodic Statewide
Reappraisals for Ad Valorem Property Tax Purposes.

Section 1. General.

1.01. Type of Regulations. -- These regulations are a "legislative rule" as defined in W. Va. Code § 29A-1-2(d) (1982).

1.02. Scope. -- These regulations clarify and implement state law as it relates to the appraisal at market value of certain species of real and personal property under W. Va. Code § 11-1A-1 et seq.

1.03. Authority. -- These regulations are issued under the authority of W. Va. Code §§ 11-1A-1(f) and 11-1A-11 (1983).

1.04. Filing Date. -- These proposed legislative regulations were originally filed in the Secretary of State's Office on September 1, 1983, and a public hearing was held on October 5, 1983. They were revised and again filed on November 18, 1983. Public hearings were held in seven

locations around the State on December 19, 1983. The proposed regulations were approved by the Tax Commissioner and filed in the State Register on January 5, 1984.

1.05. Effective Date. -- These regulations become effective thirty days after passage of an act by the Legislature authorizing their promulgation.

1.06. Citation. -- These regulations may be cited as: W. Va. Leg. Reg. 11-1A, Series 1A § _____, page _____ (1984).

Sections 2 through 10 are reserved.

Section 11.01

Section 11. Valuation of Certain Classes or Species of
Property.

11.01. Background.

(a) By September 1, 1983, the Tax Commissioner was required to propose a legislative rule for submission to the Legislature in accordance with W. Va. Code § 29A-3-1 et seq., describing in detail the methods whereby the market value (appraised value) of all real and personal property except residential and farm surface real property, will be determined during the first statewide reappraisal. W. Va. Code § 11-1A-11.

(b) This proposed rule was originally filed on September 1, 1983, and a public hearing was convened on October 5, 1983. Subsequent to the public hearing and comment period, this rule was amended and refiled in the State Register on November 18, 1983. A second public hearing was held on December 19, 1983. This proposed legislative rule was approved by the Tax Commissioner and filed in the State Register on January 5, 1984. This rule will not take effect until after an act of the Legislature is passed authorizing its promulgation.

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11.02. Scope, Use of Rule and Construction.

(a) Scope. -- This rule precribes how the appraised value of all species of property except residential and farm surface real property will be determined during the statewide reappraisal mandated by the West Virginia Constitution, article X, § 1b. This rule does not define what property is subject to assessment for ad valorem property taxes. Second, this rule does not prescribe how the appraised values determined under it will be adjusted on account of substitutions, accretions, improvements, additions, replacements, destructions, removals, casualties, acts of God, waste or any like occurrence.¹ Third, this rule does not describe how the phase-in of increased valuation, if any, resulting from the first statewide reappraisal will apply to real and personal property.² Fourth, this rule does not prescribe when appraised values determined under it will first be used.³

(b) Use of Rule. -- This rule shall be followed by all persons valuing property for purposes of the statewide reappraisal in all counties in which such property is located or has a tax situs. This is necessary in order to

¹W. Va. Code § 11-1A-14(b) requires the Tax Commissioner to propose a legislative rule covering this subject on or before September 1, 1984.

²W. Va. Code § 11-1A-22 relates to determination of the phase₃in, application and limitations.

³W. Va. Code § 11-1A-14(c) prohibits use of the first statewide reappraisal until the Legislature directs their use.

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meet the requirement in W. Va. Const. art. X, §§ 1 and 1b, that ad valorem property taxes be equal and uniform throughout the State. Consequently, once this rule is finally promulgated it shall be binding upon the Tax Commissioner and his employees, county assessors and their employees, county commissions sitting as boards of equalization and review and administrative appraisal review boards and the Board of Public Works, until amended or repealed by the Tax Commissioner in the manner prescribed by law, or abrogated by statutory amendment, or decision of the West Virginia Supreme Court of Appeals. See W. Va. Code § 11-1A-24 (1983). The objective of these regulations is the appraisal of all real and personal property at "market value."

(c) Construction. -- This rule shall be applied, and interpreted in case of any ambiguity, in conformity with the West Virginia Constitution, art. X, §§ 1, 1a and 1b, and the several provisions of the West Virginia Code relating to the definition and determination of appraised value for purposes of ad valorem property taxation. In no event shall this rule be construed as requiring any property to be appraised in excess of its market value, or as subjecting to tax any property that is exempt from ad valorem property taxation under laws of the United States or this State.

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11.03. Annual Updating. -- This rule shall be reviewed annually and amended as necessary in accordance with provisions and requirements of W. Va. Code § 29A-3-1 et seq., in order to properly reflect any future changes in statutory or case law, to clarify application(s) of existing laws or legislative regulations and to amend policies and procedures of the State Tax Department adopted by procedural or interpretive regulations to implement such laws or regulations. Whenever this rule requires the Tax Commissioner to annually determine factors such as capitalization rates, royalty rates multipliers, stumpage price, etc., notice of his determinations shall be given to the public by filing notice thereof in the State Register; and by sending a copy of the notice to each assessor.

Section 11.04(a)

11.04. Valuation of Active and Reserve Coal Properties.

(a) General. -- Coal is one of the several estates in real property which may be owned either as a separate interest or in conjunction with other interests, usually as fee ownership or as mineral ownership. If coal is owned as a separate estate, either absolute or as a leasehold interest, West Virginia property tax law requires such ownership to be listed, valued and taxed based on its true and actual value. Coal may be owned without being mined. Coal rights may exist where no coal is actually present, or where the coal is unmineable or mined out. For valuation purposes this regulation classifies coal property ownership into the following categories:

- (1) Active
- (2) Active reserves
- (3) Inactive reserves
- (4) Mined-out/Unmineable/Barren

(b) Definitions.

- (1) Acres Mined. -- Acres mined per year is the average annual production as defined in 11.04(b)(4) divided by the product of the thickness (in feet) of the coal seam being mined as detailed in mining permit reports times 1800 tons per acre

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foot times the recovery rate according to the actual recovery of coal per acre being experienced at the mining operation.

(2) Active Mining Property. -- This term refers to a mineable and merchantable seam of coal on a parcel involved in a mining operation. For the purposes of determining active mining property, contiguous parcels under one ownership or owned or leased by inter-related businesses or individuals shall be treated as one parcel. The maximum active mining portion for each seam for each mining operation on a parcel is fifteen (15) years times the acres mined [as defined in § 11-04(b)(1)] for deep mines or ten (10) years times the acres mined for surface and auger mines. If the mineable and merchantable acreage remaining in the seam(s) being mined is less than the maximum amounts listed above, then the remaining acreage will be considered the active mining property. If more than one seam on a parcel is being actively mined, then each such seam represents separate active mining property.

If more than one mining operation is mining a given coal seam on the same parcel, then each such

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mining operation has a separate active mining property. However, under no circumstances shall the sum of the active acres for all mining operations on a seam exceed the number of acres on a parcel. As necessary, the Commissioner shall apportion the number of acres for each mining operation, based upon a review of relevant leases, and the respective rates of average annual production.

(3) Active Reserves. -- This term means and includes the entire residual acreage of mineable and merchantable coal for each seam being actively mined in excess of the active mining property; or the number of acres corresponding to twenty-five (25) years times the acres mined per year [§ 11.04(b)(1)], whichever is less.

(4) Average Annual Production. -- The average annual rate of coal production, in tons per fiscal year, ending June 30th of each calendar year, is generally determined by a weighted average of three (3) years net production.

The weighted average shall be determined by multiplying the most recent year's production by .4, the previous two (2) years production multiplied by .3, and the resulting three (3) figures

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added together to arrive at the average annual production. However, if there is no production during the most recent fiscal year then the property will be valued as inactive reserves.

When there has been no production during the second or third most recent fiscal year, the production for the current year will be factored by .5 and the production for the earlier fiscal year in which production existed will be factored by .5 and the resulting two figures will be added together to arrive at the average annual production.

If there was no production in both the second and third most recent fiscal years then the production for the most recent fiscal year will be factored by 1.0 and the resulting figure will be the average annual production.

(5) Barren. -- Those properties where coal rights are separately and/or individually owned, and the existence of one or more coal seams has not been established.

(6) Capitalization Rate. -- A rate used to convert an estimate of income into an estimate of market value. [For further explanation see § 11.04(a)(1)(C).]

(7) Inactive Reserves. -- Inactive reserves are

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those seams of coal, or portions thereof, which are mineable and merchantable but are not active mining property, or active reserves.

(8) Life of Mining Operation. -- The life of a deep mining operation shall be fifteen (15) years, or the number of years required to exhaust the seam at the average annual production [§ 11.04(b)(4)] rate, whichever is less. The life of a surface or auger mining operation shall be ten (10) years, or the number of years required to exhaust the seam at the average annual production rate, whichever is less. Fractional years will be rounded to nearest whole number.

(9) Merchantable Coal. -- Coal which is ordinarily used for sale and can usually be sold at a profit.

(10) Metallurgical Coal. -- This term shall mean bituminous coal that is suitable for making coke by industries that refine, smelt, and work with iron and/or steel.

(11) Mineable Coal. -- Coal which could be profitably mined by judicious methods.

(12) Mined-Out. -- A seam of coal, or any portion thereof, which is depleted by prior mining opera-

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tions and which is not mineable and merchantable by modern technology.

(13) Mining Operation. -- This term shall mean an enterprise engaged in actively obtaining or preparing to obtain coal or its by-products from the earth's crust, including underground, surface and auger mines. Each mining operation may have more than one area designated as "Active Mining Property" as defined in Section 11.04(b)(2). The designation of "Active Mining Property" areas shall be determined as follows:

- (i) If the mining operation is producing coal from one seam under a Department of Natural Resources or Department of Mines permit, then that operation will be designated as an "Active Mining Property." However, if the mining operation is producing coal from more than one seam under a Department of Natural Resources or Department of Mines permit, then each active seam will be designated as an "Active Mining Property."
- (ii) If the mining operation is producing coal from one seam at different portals and/or faces under one specific Department

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of Natural Resources or Department of Mines permit, then that operation will be designated as an "Active Mining Property."

However, if the production of coal involves different mining techniques (e.g. surface, auger or deep mining method), or if mining sites are separate and generally independent, then such sites will be designated as separate "Active Mining Properties."

(14) Multiplier. -- This term shall mean the "present worth of one per period" for the life of the mining operation [§ 11.04(b)(8)] employing the capitalization rate determined in section 11.04 (c)(1)(C), as determined by a standard mid-year life Inwood table.

(15) Royalty Rate. -- The royalty rates determined annually by the Tax Commissioner are the current market royalty rates for arms-length, willing-buyer, willing-seller, transactions for each of the four categories of coal mining operations derived in section 11.04(c)(B). The royalty rates are deemed to be paid to each owner of a coal estate for all actively mined property.

(16) Steam Coal. -- This term shall mean bituminous

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coal that is mineable and merchantable but that is not suitable for making coke by industries that refine, smelt, and work with iron and/or steel.

(17) Unmineable Coal. -- Coal which is not mineable and merchantable as defined above.

(c) Valuation Methods.

(1) Method for Determining Value of Active Mining Property.

(A) General. -- The value of active mining property shall be the average annual production times a royalty rate times a multiplier. In no case will the active mining property be valued at less than its value as inactive reserve property.

(B) Royalty Rate. -- For use in the formula prescribed by this regulation, the royalty rate(s) shall be determined for each of the following four (4) different types of coal mining operations.

- (1) Deep mines, steam coal;
- (2) Deep mines, metallurgical coal;
- (3) Surface and auger mines, steam coal; and
- (4) Surface and auger mines, metal-

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lurgical coal.

These royalty rates shall be established annually by the Tax Commissioner after a review of recorded, willing seller-willing buyer arms-length coal property leases that have occurred in the State of West Virginia during the eight (8) years (W. Va. Code § 11-1A-3) prior to the appraisal date and through inspection of any other appropriate information. The review will place a greater emphasis on the information and leases transacted during the most recent years. The Tax Commissioner will maintain and publish this survey (report) on royalty rates on or before March 31 of each year; will accept written public comment on the survey until May 1 of each year; and issue the final royalty rates on or before July 1 of each year. This survey of royalty rates will be constructed (to the maximum possible extent) to indicate the following: (1) county in which leased property is located, (2) deed book, page number, (3) lessor-lessee, (4) date recorded, (5) acreage involved, (6) seams involved, (7)

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type of mining operation, and (8) consideration made. Those cases where the leasehold transaction fails to contain a royalty consideration will not be included in the survey. From this survey, the Tax Commissioner will select the royalty rate(s) that best typify such transactions. In order to convert percentage royalty rates into specific dollars per ton rates, the Tax Commissioner will separately conduct a review of West Virginia coal selling prices, and select specific selling price rate(s) based on prices best typifying activity in each appraisal year. The selected selling price(s) per ton when multiplied by the percentage royalty will result in the specific dollar per ton royalty rate factor.

(C) Capitalization Rate. -- The capitalization rate will be developed considering the techniques found in general practice in the appraisal profession when developing an income approach valuation estimate. Below is a listing of terms and definitions employed in developing various capitalization rate

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indicators.

(1) Definitions.

- (i) Bands of Investment Discount Component. -- A discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing.
- (ii) Discount Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to the aggregate of the anticipated return-on-investment over the economic life of an investment.
- (iii) Economic Life Method of Recapture. -- A method of developing a recapture rate by estimating the period of time an investment will produce a return and estimating an equal periodic rate of recapture of the investment over this return period.

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- (iv) Management Rate. -- A rate reflecting a return to an investor for the management of similar investment portfolios.
- (v) Market Comparison Discount. -- A discount rate derived by dividing income net of the recapture component and property taxes by the arms-length selling price of the property.
- (vi) Market Comparison Method of Recapture. -- A recapture rate estimated by dividing income net of the discount component and property taxes by the arms-length selling price of the property.
- (vii) Non-liquidity Rate. -- A rate reflecting a return to an investor representing the loss of interest on an investment arising from the time required to sell the investment.
- (viii) Property Tax Component. -- A rate reflecting a provision for

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returning to an investor a sum of money equal to property taxes paid over the economic life of an investment.

(ix) Recapture Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to his investment.

(x) Risk Rate. -- A rate reflecting a return to an investor necessary to attract capital to an investment containing a possible loss of principal and/or interest.

(xi) Safe Rate. -- A rate reflecting a return to a investor on an investment which has little, if any, livelihood of loss of principal or anticipated return on investment.

(xii) Summation Discount Component. -- A discount rate expressed as the aggregate of a safe rate, risk rate, non-liquidity rate, and management rate.

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(2) Discussion. -- The capitalization rate as defined in Section 11.04(b)(6) will be determined annually by the Tax Commissioner through the use of generally accepted methods for estimating such rates. The rate so developed will consider a level-terminal income series which is indicative of active mining properties. The capitalization rate used to value active mining properties will be developed giving consideration to the following three (3) approaches:

(a) Discount Component

(i) Market Comparison -- Sufficient sales data permitting, the market comparison technique will be employed as the primary indicator for an appropriate discount component. The market comparison discount component will be developed by dividing aggregate royalty rate income streams adjusted for recapture by verified

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recorded arms-length sales transactions for active mining properties which have occurred in the State of West Virginia during the eight (8) years (W. Va. Code § 11-1A-3) prior to the annual appraisal date. The market comparison discount component selected will be based upon those rate indicators best typifying activity in this eight (8) year research period. In selecting the discount component greater emphasis will be given to information from arms-length sales occurring during the most recent years of the study.

(ii) Summation Technique -- In the absence of sufficient data to statistically support primary consideration of the market comparison technique,

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the summation techniques will be given primary consideration. The summation discount component will be developed reflecting the following four (4) major sub-components:

- (1) Safe Rate
- (2) Risk Rate
- (3) Non-liquidity Rate
- (4) Management Rate

The "Safe Rate" will be developed through review of quarterly interest rates offered on thirteen (13) week United States Treasury Bills for a period of three (3) years prior to the appraisal date. The "Risk Rate" will be developed through review of data resulting from an annual survey of lending institutions, such survey reflecting interest rates required on loans for acquisition and/or development

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of coal properties. This survey will be conducted for a three (3) year period prior to the appraisal date. Results of the survey will be compared to quarterly interest rates offered on thirteen (13) week United States Treasury Bills for the same three (3) year period. An interest differential will then be selected representing the "Risk Rate." The "Non-liquidity Rate" will be developed through an annual survey to determine a reasonable estimate of time that coal properties remain on the market before being sold. The market time thus determined will be used to identify United States Treasury Bills with similar time differentials in excess of thirteen (13) week Treasury Bills. The

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interest differential between these securities will be deemed to be representative of the "Non-liquidity Rate." The "Management Rate" will be developed through a survey of investment firms to identify charges for the management of investment portfolios.

(iii) Bands-of-Investment --

Data permitting the Bands-of-Investment technique will be considered in conjunction with the two (2) previously mentioned discount estimate components.

(b) Recapture Component -- Selection of a multiplier will be accomplished through access of a standard mid-year life Inwood table. The Inwood table has a factor for recapture built into the table coefficients. Inclusion of a recapture component in the capitalization rate is therefore not appropriate.

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(c) Property Tax Component --

Research indicates that royalty rates, negotiated as a general practice in the coal industry, at the present time, do not include property taxes as a component. This component will not be used in the capitalization rate as defined in these regulations unless the above described general practice of the coal industry changes.

(3) The surveys referenced in Section 11.04(c)(1)(C)(2) will be conducted and tentative results published by the Tax Commissioner on or before March 31 of each year. Public comment on such surveys will be accepted until May 1 of each year, and final results will be issued on or before July 1 of each year.

(2) Valuation of Active Reserves.

(A) General. -- The value of each acre of active reserves shall be one tenth of the per acre value of active mining property.

(B) Per Acre Value of Active Mining Pro-

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perty. -- Per acre value of active mining property equals the value of active mining property as described in § 11.04(c)(1) divided by the number of acres in the active mining property.

(C) In the event that the active reserve value per acre is less than the inactive reserve value per acre, the inactive reserve regional value per acre will be used.

(3) Valuation of Inactive Reserves.

(A) General. -- Inactive reserves shall be valued considering a review of sales reflecting arms-length, willing buyer-willing seller transactions of such properties, and the market conditions in the region within which the property is located. The inactive coal reserve value shall be the product of the inactive reserve acres multiplied by the regional inactive reserve value per acre for the region in which the property is located.

(B) Review of Inactive Reserve Coal Property Sales. -- The values per acre for inactive reserves shall be established annually by the Tax Commissioner after review of recorded

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willing seller-willing buyer arms-length coal property sales that have occurred in the State of West Virginia during the eight (8) years (W. Va. Code § 11-1A-3) prior to the appraisal date, and through inspection of other appropriate information including the effect of the size of the parcels on the per acre value. This review will place a greater emphasis on the information and sales transacted during the most recent years. The Tax Commissioner will maintain and publish this survey (report) of inactive coal property sales on or before March 31 of each year; will accept public comment on the survey until May 1 of each year; and issue the final regional values per acre on or before July 1 of each year. This survey of inactive reserve coal sales will be constructed to indicate the following: (1) county in which the property is located, (2) deed book, page number, (3) grantor-grantee, (4) date recorded, (5) acreage involved, (6) coal seams involved, (7) consideration, and (8) consideration per coal acre sold. From this survey,

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the Tax Commissioner will select the regional values per inactive acre that best typify such transactions.

(C) Inactive Reserve Regions. -- Of the fifty-five counties in West Virginia, the State Geological and Economic Survey has identified that mineable and merchantable coal deposits occur only in forty-four counties.

The forty-four counties containing mineable, merchantable coal seams shall be grouped into five (5) regions based on type of coal seams, location, ownership patterns, mining activity, and sale prices of inactive reserves.

(1) Region 1 - Brooke, Harrison, Marion, Marshall, Monongalia and Ohio Counties.

(2) Region 2 (No present mining) - Cabell, Calhoun, Doddridge, Hancock, Pocahontas, Putnam, Roane, Tyler, Wetzel, and Wirt Counties and the northwest portion of Kanawha County (Jefferson, Union, Poca Districts that lie north of

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Elk River).

(3) Region 3 - Barbour, Grant, Mineral, Preston, Randolph, Taylor, Tucker and Upshur Counties.

(4) Region 4 - Braxton, Clay, Gilmer, Greenbrier, Lewis, Mason, Nicholas and Webster Counties.

(5) Region 5 - Boone, Fayette, Lincoln, Logan, McDowell, Mercer, Mingo, Raleigh, Summers, Wayne and Wyoming Counties and the southeast portion of Kanawha County (Washington, Malden, Loudon, Cabin Creek Districts, and part of Big Sandy and Elk Districts which lie south of Elk River).

Of the remaining eleven (11) counties two (2), Jefferson and Hardy, have been classified as non-coal and the other nine (9) Berkeley, Morgan, Hampshire, Pendleton, Monroe, Jackson, Wood, Ritchie, and Pleasants are listed as containing thin, unmineable seams.

If under any circumstances, the coal in any of the eleven (11) counties listed above becomes mineable and merchantable, that county will be classified in the appropriate

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region.

- (D) Multiple Seam Parcels. -- For parcels containing more than one mineable, merchantable seam, the inactive portion of the seam(s) being mined are assigned 100% of the value determined by the method summarized in § 11.04(c)(3). The remaining unmined, inactive seams shall then be ranked according to their mineable, merchantable acreages. The largest seam and the second largest seam are each assigned 100% of the value determined by the method summarized in § 11.04(c)(3). The third largest unmined, inactive seam is valued at 75% of the amount as determined by the methods summarized in § 11.04(c)(3). Subsequent seams are each valued at 50% of the amount determined by the method summarized in § 11.04(c)(3). The final valuation of inactive reserves on a parcel is the sum of each of the individual valuations.
- (4) Valuation of Mined-Out/Unmineable/Barren Coal Properties. -- Properties in this category shall be valued at \$5.00 per surface acre.

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(5) Summary of Valuation Methods.

(A) Each seam on those properties with mineable and merchantable coal shall be valued as follows.

Active Mining Property

(Average Annual Production)	X	(Royalty Rate Per Ton)	X	(Multiplier)	=	(Active Coal Real Property Value)
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Active Reserve Property

(Active Reserves)	X	(Per Acre Value of Active Mining Property)	X 10%	=	(Active Reserve Coal Real Property Value)
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Inactive Reserve Property

(Total Inactive Reserve Acres)	X	(Regional Per Acre Inactive Reserves Value)	=	(Inactive Coal Reserves Real Property Value)
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(B) Mined-out, unmineable and barren coal properties shall be valued at Five Dollars (\$5.00) per surface acre.

(C) The total value for coal properties will be the sum of the value of active mining property, active reserves, the inactive reserves and the mined-out, unmineable and barren acres.

(D) If other real property interests are owned in the coal property acreage, then the value of those additional interests shall be

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added to the total value of the coal properties to arrive at the total real property value.

(6) Leasehold Interests. -- These regulations generally attribute the value of coal to the owner of the coal property. In those circumstances, however, where the owner of the property is subject to a lease requiring the owner to permit mining at royalty rates substantially below current market values, the owner may petition the Assessor, and on appeal, the Tax Commissioner, to attribute a portion of the value of the coal determined by this formula to the leaseholder.

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11.05 Valuation of Producing and Reserve Oil
Properties.

(a) General. -- Oil is one of the several estates in real property which may be owned either as a separate estates in real property or in conjunction with other interests, usually as fee ownership, oil and gas ownership or as minerals ownership. If oil is owned as a separate estate, West Virginia property tax law requires such ownership to be listed, valued and taxed based on its true and actual value. If the interest in oil is part of a larger interest in a tract of property, the value of the oil interest shall be included in the value of the larger interest. Oil may be owned without being produced. Oil rights may exist where no oil is actually present, or where the oil is unproducable or depleted.

(b) Annual Reports. -- The Tax Commissioner will publish an annual report for the variables to be considered in arriving at the value of the specific oil-related property. These reports when required by the regulation will be published, subjected to comment and take effect upon the schedule set out in this section. All such reports must be published on or before the 30th day of April preceding the assessment date, followed by a thirty day period for written public comment. The Tax Commissioner will review the com-

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ments and present the final values of the variables to be used in the assessment year on or before July 1 of each calendar year. These final values will be posted in the county assessors office and the State Register.

(c) Categories for Valuing Oil Bearing Properties. --

Parcels of property thought to bear oil or having the oil mineral interest separated from the fee of the property will be classified as oil producing property, assigned oil reserves or unassigned oil reserves.

(d) Definitions.

(1) "Oil producing property" means property from which oil is being produced or extracted. Oil producing property is limited to the interest or interests underlying an area of up to 40 acres of surface per well with one or more active well(s) on the parcel.

(2) "Assigned oil reserve property" means properties in an area of potential production, as determined by the Tax Department, but from which there has been no past production of oil, or the part of a parcel from which there has been past or current production that lies outside an oil producing property, or the 40 acres of surface per well of oil producing property if the well is

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shut-in for the entire year.

(3) "Unassigned oil reserve property" means properties outside of the area of potential production, as determined by the Tax Department, in which the oil mineral interest has been conveyed separately from the rest of the property, or the 40 acres of surface per well of oil producing property if the well has been plugged and abandoned as required by Article 4, Chapter 22 of the West Virginia Code [W. Va. Code § 22-4-1 et seq. (1981)].

(4) "Working interest" means the fractional interest in oil production subject to operating expenses and owned by the leasehold or operator. Owner operated wells are to be valued using the working interest formula.

(5) "Royalty interest" means the fractional interest in oil production not subject to operating expenses and retained by the oil rights owner or lessor. Overriding royalty interests not incurring operating expenses are treated entirely as royalty interest.

(6) "Flush production" means the production of oil from any well on a producing oil property

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whose initial production date is two years or less prior to the date of valuation.

(7) "Settled production" means the production of oil from all wells on an oil producing property whose initial production date is more than two years prior to the date of valuation.

(8) "Personal property" used in oil production means machinery and equipment in and about the well and all other tangible personal property used in producing oil from the well. It shall not include vehicles or other tangible personal property not permanently used in production.

(9) "Operator" means any person or persons, corporation, partnership, adventure or other enterprise which proposes to or does locate, drill, manage or abandon any well.

(e) Methods of Valuation.

(1) General. -- For oil producing property, its value shall be determined by (1) a formula which applies a multiplier to the average daily production of the well(s) for working interest and royalty interest property, plus (2) a value attributable to the personal property used in production per well times the number of producing wells

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on the property for working interest property.

Where ownership is split through a lease or royalty arrangement, different multipliers will be used for the working interest and the royalty interest. Each term in this computation is discussed below.

(2) Average Daily Production. -- The average daily production of an oil well is its production rate, measured in terms of oil field standard 42 gallon barrels, for the year preceding the annual tax assessment date, divided by the number of full or partial days of well production. Partial days shall include time allowed for oil to collect between pumpings. Full or partial days shall not include time when well non-production results from workover, redrilling, or well maintenance.

(3) Percentage Interest in the Oil. -- Where the ownership of oil in place is divided through a lease or other arrangement, the compensation to the owner of the property is derived by designating a percentage of the production to be the royalty payment to the owner. The remainder is the working interest. The Tax Commissioner will annually determine an assumed standard working and royalty percentage interest through a review of

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oil and gas leases from throughout the State. The royalty and working interest are used in the method described in the regulations for determination of the formulas to be used to appraise oil producing properties.

(4) Average Industry Market Price. -- The Tax Commissioner will annually derive the average industry market price by reviewing the price paid per barrel by the major West Virginia crude oil purchasers. The Tax Commissioner's annual report on the average industry market price should reflect a reduction for average Federal Windfall Profits Tax and West Virginia Business and Occupation Taxes deemed to be paid by the working or royalty interests in the production. The average industry market price will be used in the method described in the regulations for determination of the formulas to be used to appraise oil producing properties.

(5) Average Industry Operating Expense. -- The Tax Commissioner will annually determine the average industry operating expense per well and publish that expense in an annual report. The average industry operating expenses per well will

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be used in the method described in the regulations for determination of the formulas to be used to appraise oil producing properties.

(6) Capitalization Rate. -- A capitalization rate will be developed considering the three components set out in § 11.05(e)(6)(B). This rate will be used to select the factor(s) from a standard mid-year life present worth of one table using a compound interest premise. (See § 11.05(e)(10) for an example.) Below is a listing of terms and definitions employed in developing this capitalization rate.

(A) Definitions.

(i) Bands of Investment Discount Component. -- A discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing.

(ii) Discount Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to the aggregate of the anticipated return-on-investment over the economic life of an

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investment.

- (iii) Management Rate. -- A rate reflecting a return to an investor for the management of similar investment portfolios.
- (iv) Market Comparison Discount. -- A discount rate derived by dividing income net of the recapture component and property taxes by the arms-length selling price of the property.
- (v) Non-liquidity Rate. -- A rate reflecting a return to an investor representing the loss of interest on an investment arising from the time required to sell the investment.
- (vi) Property Tax Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the economic life of an investment.
- (vii) Recapture Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to his investment.

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- (viii) Risk Rate. -- A rate reflecting a return to an investor necessary to attract capital to an investment containing a possible loss of principal and/or interest.
- (ix) Safe Rate. -- A rate reflecting a return to a investor on an investment which has little, if any, likelihood of loss of principal or anticipated return on investment.
- (x) Summation Discount Component. -- A discount rate expressed as the aggregate of a safe rate, risk rate, non-liquidity rate, and management rate.
- (B) Discussion. -- The capitalization rate will be determined annually by the Tax Commissioner through the use of generally accepted methods for estimating such rates. The rate so developed will assume a declining-terminal income series which is indicative of oil producing properties. The capitalization rate used to value oil properties will be developed considering (1) a discount rate determined primarily by the summation technique,

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(2) a recapture component, and (3) a property tax component.

(1) Discount Component

(i) Summation Technique -- The summation technique will be given primary consideration in the valuation of oil producing property. The summation technique will determine a discount component which will be used to calculate the present value of the future income of the oil producing property utilizing the following four (4) major sub-components:

- (1) Safe Rate
- (2) Risk Rate
- (3) Non-liquidity Rate
- (4) Management Rate

The "Safe Rate" will be developed through review of quarterly interest rates offered on thirteen (13) week United States Treasury Bills for a period of three (3) years prior to the appraisal date.

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The "Risk Rate" will be developed through review of data resulting from an annual survey of lending institutions, such survey reflecting interest rates required on loans for acquisition and/or development of oil producing properties. This survey will be conducted for a three (3) year period prior to the appraisal date. Results of the survey will be compared to quarterly interest rates offered on thirteen (13) week United States Treasury Bills for the same three (3) year period. An interest differential will then be selected representing the "Risk Rate." The "Non-liquidity Rate" will be developed through an annual survey to determine a reasonable estimate of time that oil properties remain on the market before being sold. The market time thus determined will be used to identify

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United States Treasury Bills with similar time differentials in excess of thirteen (13) week Treasury Bills. The interest differential between these securities will be deemed to be representative of the "Non-liquidity Rate." The "Management Rate" will be developed through a survey of investment firms to identify charges for the management of investment portfolios.

(ii) Bands-of-Investment/Market Comparison. -- Data permitting, the bands-of-investment and market comparison techniques will be used to verify the summation discount component.

(2) Recapture Component -- Selection of a multiplier will be accomplished through access of a standard mid-year life present worth of one table premised on a compound interest rate. This table has a factor for recapture built into the

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table coefficients. Inclusion of a recapture component in the capitalization rate is therefore not appropriate.

(3) Property Tax Component -- This component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class III property.

(7) Deemed Average Daily Production Rate. -- For the purpose of determining multipliers for wells of different productive capacities, wells will be divided into three classifications. Those classifications will be:

- (a) .0 through .750 barrels of average daily production.
- (b) .751 through 2.000 barrels of average daily production.
- (c) Greater than 2.000 barrels of average daily production.

For the sole purpose of calculating the multiplier applicable to each classification of production, all wells within each classification will be deemed to have the same rate of production and those rates are as follows:

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	<u>Classification</u>	<u>Deemed ADP Rate</u>
(a)	.0 - .750 ADP	.750 ADP
(b)	.751 - 2.000 ADP	1.500 ADP
(c)	2.000+	4.000 ADP

(8) Average Industry Production Decline Rate. --

The Tax Commissioner will annually derive the average production decline rate by a review of well production records located at the West Virginia Department of Mines, Office of Oil and Gas and data provided by companies and individuals. The Tax Commissioner will annually publish a report on the result of this review. The average production decline rate will be used in conjunction with the deemed average daily production rate for calculation of multipliers for the various production classifications.

(9) Multipliers. -- The multiplier serves to combine mathematically the effects of the deemed average daily production rate, average industry market price of oil, average industry well operating expense, working and royalty interest, flush and settled production, average production decline rate and a capitalization rate. [See § 11.05(e)(10)] This multiplier will not be constant for all oil produc-

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ing properties. Each category defined below will have a separate multiplier and the procedure and results of these income analyses will be published in an annual report by the Tax Commissioner. The multipliers are to be used for oil producing properties.

Separate multipliers shall be derived for each of the following twelve (12) categories:

- (A) Working interest in settled production for average daily production between 0 and .750 barrels per day of oil.
- (B) Working interest in settled production for average daily production of between .751 and 2.000 barrels per day.
- (C) Working interest in settled production for average daily production of more than 2.000 barrels per day.
- (D) Working interest in flush production for average daily production of between 0 and .750 barrels per day.
- (E) Working in flush production for average daily production of between .751 and 2.000 barrels per day.
- (F) Working interest in flush production for

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average daily production of over 2.000 barrels per day.

(G) Royalty interest in settled production for average daily production between 0 and .750 barrels per day.

(H) Royalty interest in settled production for average daily production between .751 and 2.000 barrels per day.

(I) Royalty interest in settled production for average daily production in excess of 2.000 barrels per day.

(J) Royalty interest in flush production for average daily production between 0 and .750 barrels per day.

(K) Royalty interest in flush production of average daily production of between .751 and 2.000 barrels per day.

(L) Royalty interest in flush production for average daily production of 2.000 barrels per day.

(10) EXAMPLE:

The multipliers for each category will be determined as shown in this example. The numbers used in this example are not the result of any actual survey, although they may approximate or duplicate the results of such surveys. This example assumes that the necessary annual surveys have been performed with the results as follows:

Average Daily Production (ADP) Rate = .75 barrel

Working Interest = 7/8 of production

Royalty Interest = 1/8 of production

Average Industry Market Price = \$22.50/barrel

Average Industry Operating Expense = \$3,600/year

Capitalization Rate = 15%

Average Industry Decline Rate = 7% Per Year
for Settled Production

Gross Income = Percentage Interest ADP x 365
x \$22.50

Net Income = Gross Income - Operating Expenses

Working Interest

.0--.750 ADP Category

	Deemed Average Daily Production(ADP)	Working Interest ADP	Annual Gross Income	Operating Expenses	Net Income	Capitalization Rate Present Worth of 1 Factor	Discounted Net Income
Year 1	.750	.656	\$5,388	\$3,600	\$1,788	.933	\$1,668
Year 2	.698	.611	5,018	3,600	1,418	.811	1,150
Year 3	.649	.568	4,665	3,600	1,065	.705	751
Year 4	.604	.529	4,345	3,600	745	.613	457
Year 5	.562	.492	4,041	3,600	441	.533	235
Year 6	.523	.458	3,762	3,600	162	.464	75
							<u>\$4,336</u>

Total Discounted
Net Income

$$\frac{\$4,336 \text{ (Total Discounted Net Income)}}{.656 \text{ (Year 1: Working Interest ADP)}} = \$6,610 \text{ (Multiplier for Working Interest)}$$

Royalty Interest

.0--.750 ADP Category

	Deemed Average Daily Production(ADP)	Royalty Interest ADP	Income	Capitalization Rate Present Worth of 1 Factor	Discounted Income
Year 1	.750	.094	\$772	.933	\$720
Year 2	.698	.087	714	.811	579
Year 3	.649	.081	665	.705	469
Year 4	.604	.076	624	.613	383
Year 5	.562	.070	575	.533	306
Year 6	.523	.065	534	.464	248
					<u>\$2,705</u>

Total Discounted Income

$$\begin{array}{l} \$2,705 \text{ (Total Discounted Income)} \\ \times .094 \text{ (Year 1: Royalty Interest ADP)} \\ \hline = \$28,777 \text{ (Multiplier for Royalty Interest)} \end{array}$$

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(11) Personal Property Used in Oil Production. --

The Tax Commissioner will annually derive and publish a report of the average value of the personal property used in oil production. The Tax Commissioner will review the comments on the report and present the value for the personal property used in oil production. This value will be multiplied by the number of producing and shut-in wells on the property to determine the overall value of personal property used in oil production.

(f) Summary of Method of Valuing Oil Producing Property. -- Each active oil property in West Vir-

ginia will be valued in the following way:

Working Interest

$$1. \begin{array}{l} \text{(Working Interest} \\ \text{Average Daily} \\ \text{Production)} \end{array} \quad \times \quad \text{(Multiplier)} \quad = \quad \begin{array}{l} \text{(Value of Oil} \\ \text{Producing Property)} \end{array}$$

PLUS

$$2. \begin{array}{l} \text{(Value for Personal} \\ \text{Property Used in} \\ \text{Oil Production)} \end{array} \quad \times \quad \text{(Number of Wells)} \quad = \quad \begin{array}{l} \text{(Total Value of} \\ \text{Personal Property} \\ \text{Used in Oil Production)} \end{array}$$

Royalty Interest

$$1. \begin{array}{l} \text{(Royalty Interest} \\ \text{Average Daily} \\ \text{Production)} \end{array} \quad \times \quad \text{(Multiplier)} \quad = \quad \begin{array}{l} \text{(Value of Oil} \\ \text{Producing Property)} \end{array}$$

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(g) Valuation of Assigned Reserves. -- The value per acre of assigned reserves shall be equal the annual lease payment per acre times the multiplier.

A valuation schedule for assigned oil reserve properties will be determined annually by the Tax Commissioner on a regional basis. The Tax Commissioner will annually conduct a review of oil agreements transacted at arms length in all fifty-five counties to determine the annual lease payment per acre, as well as the lease term. The Tax Commissioner will also conduct a review of non-dry completions in all 55 counties as reported to the West Virginia Department of Mines, Office of Oil and Gas. The assigned reserve multiplier is the sum of the projected annual income stream during the lease term discounted in each year by a capitalization rate. The regions, the annual lease payment per acre, lease term, and multiplier will be published annually in a report by the Tax Commissioner. The Tax Commissioner will review the public comments on the report and present the valuation determination for assigned oil reserve property.

(h) Valuation of Unassigned Oil Reserves. -- Unassigned Reserves will be valued at the nominal rate of \$5.00 per acre. Unassigned reserves will be properties outside of the area of potential production as determined by the Tax

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Commissioner. The Tax Commissioner will annually publish a report of the regions which are classified as unassigned oil reserves.

(i) Valuation of Wells that Produce Both Oil and Gas. -- The valuation of these producing wells shall be determined by use of the methods described in § 11.05 for oil and § 11.06 for gas excluding the value for personal property used in both methods. These values, including the value of personal property, shall then be summed to result in the overall value of the oil and gas producing acreage.

The Tax Commissioner will annually derive and publish a report of the average value of the personal property used in oil and gas production. This value will be multiplied by the number of producing and shut-in wells on the property to determine the overall value of personal property used in oil and natural gas production.

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11.06 Valuation of Producing and Reserve Natural
Gas Properties.

(a) General. -- Natural gas is one of the several estates in real property which may be owned either as a separate interest or in conjunction with other interests, usually as fee ownership, oil and natural gas ownership or as minerals ownership. If natural gas is owned as a separate estate, West Virginia property tax law requires such ownership to be listed, valued and taxed based on its true and actual value. If the interest in natural gas is part of a larger interest in a tract of property, the value of the natural gas interest shall be included in the value of the larger interest. Natural gas may be owned without being produced. Natural gas rights may exist where no natural gas is actually present, or where the natural gas is unproducible or depleted.

(b) Annual Reports. -- The Tax Commissioner will publish an annual report for the variables to be considered in arriving at the value of the specific natural gas related property. These reports when required by the regulation will be published, subjected to comment and take effect upon the schedule set out in this section. All such reports must be published on or before the 30th day of April preceding the assessment date, followed by a thirty day period for

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written public comment. The Tax Commissioner will review the comments and present the final value of the variables to be used in the assessment year on or before July 1 of each calendar year. These final values will be posted in the county assessor's office and the State Register.

(c) Categories for Valuing Natural Gas Bearing Properties. -- Parcels of property thought to bear natural gas or having the natural gas mineral interest separated from the fee of the property will be classified as natural gas producing property, assigned natural gas reserves or unassigned natural gas reserves.

(d) Definitions.

(1) "Natural gas producing property" means the property from which natural gas is being produced or extracted. Natural gas producing property is limited to the interest or interests underlying an area of 125 acres of surface per well with active wells on the parcel.

(2) "Assigned natural gas reserve property" means properties in an area of potential production, as determined by the Tax Department, but from which there has been no past production of natural gas, or the part of a parcel from which there has been past or current production that lies outside a

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natural gas producing property, or the 125 acres of surface per well of natural gas producing property if the well is shut-in for the entire year.

(3) "Unassigned natural gas reserve property" means properties outside of the area of potential production, as determined by the Tax Department, in which the natural gas mineral interest has been severed from the rest of the property, or the 125 acres of surface per well of natural gas producing property if the well has been plugged and abandoned as required by Article 4, Chapter 22 of the West Virginia Code [W. Va. Code § 22-4-1 et seq. (1981)].

(4) "Working interest" means the fractional interest in natural gas production subject to operating expenses and owned by the leasehold or operator. Owner operated wells are to be valued using the working interest formula.

(5) "Royalty interest" means the fractional interest in natural gas production not subject to operating expenses and retained by the natural gas rights owner or lessor. Overriding royalty interests not incurring operating expenses will be treated entirely as a royalty interest.

(6) "Flush production" means the production of

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gas from any well on a natural gas producing property whose initial production date is two years or less prior to the date of valuation.

(7) "Settled production" means the production of gas from all wells on a natural gas producing property whose initial production date is more than two years prior to the date of valuation.

(8) "Personal property" used in natural gas production means machinery and equipment in and about the well and all other tangible personal property used in producing gas from the well. It shall not include vehicles or other tangible personal property not permanently used in production.

(9) "Operator" means any person or persons, corporation, partnership, adventure or other enterprise which proposes to or does locate, drill, manage or abandon any well.

(e) Methods of Valuation.

(1) General. -- For natural gas producing property, its value shall be determined by (1) a formula which applies a multiplier to the quantity of the gross receipts minus the royalties paid for the working interest or a multiplier times the

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gross royalty receipts for the royalty interest;
plus (2) a value attributable to the personal
property used in production per well times the
number of producing wells on the property when
valuing working interests. Where ownership is
split through a lease or royalty arrangement,
different multipliers will be used for the working
interest and the royalty interest. Each term in
this computation is discussed below.

(2) Percentage Interest in the Natural Gas. --

Where the ownership of natural gas in place is
divided through a lease or other arrangement, the
compensation to the owner of the property is
derived by designating a percentage of the pro-
duction to be the royalty payment to the owner.
The remainder is the working interest. The Tax
Commissioner will annually determine an assumed
average working and royalty percentage interest
through a review of oil and gas leases from
throughout the State.

(3) Average Industry Market Price. -- The Tax
Commissioner will annually derive and report the
average industry market price by reviewing the
price paid per MCF by the major West Virginia

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natural gas purchasers. The average industry market price will be used in the method described in the regulations for determination of the formulas to be used to appraise natural gas producing properties.

(4) Average Industry Operating Expense. -- The Tax Commissioner will annually determine and report the average industry operating expense per well. The average industry operating expenses per well will be used in the method described in the regulations for determination of the formulas to be used to appraise natural gas producing properties.

(5) Average Production Rate. -- The Tax Commissioner will annually determine and report the production rate of natural gas wells through review of information filed with the West Virginia Department of Mines, Office of Oil and Gas. The production rate will be used in the method described in the regulations for the determination of the formulas to be used to appraise natural gas producing properties.

(6) Average Industry Production Decline Rate. -- The Tax Commissioner will annually derive and

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report the average industry production decline rate by a review of well production records located at the West Virginia Department of Mines, Office of Oil and Gas and data provided by companies and individuals. The average industry production decline rate will be used in the method described in the regulations for determination of the formulas to be used to appraise natural gas producing properties.

(7) Capitalization Rate. -- A capitalization rate will be developed considering the three components set out in § 11.06(e)(7)(B). This rate will be used to select the factor(s) from a standard mid-year life present worth of one table using a compound interest premise. (See § 11.06(e)(9) for an example.) Below is a listing of terms and definitions employed in developing this capitalization rate.

(A) Definitions.

(i) Bands of Investment Discount Component. -- A discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing.

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- (ii) Discount Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to the aggregate of the anticipated return-on-investment over the economic life of an investment.
- (iii) Management Rate. -- A rate reflecting a return to an investor for the management of similar investment portfolios.
- (iv) Market Comparison Discount -- A discount rate derived by dividing income net of the recapture component and property taxes by the arms-length selling price of the property.
- (v) Non-liquidity Rate. -- A rate reflecting a return to an investor representing the loss of interest on an investment arising from the time required to sell the investment.
- (vi) Property Tax Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the economic

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life of an investment.

(vii) Recapture Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to his investment.

(viii) Risk Rate. -- A rate reflecting a return to an investor necessary to attract capital to an investment containing a possible loss of principal and/or interest.

(ix) Safe Rate. -- A rate reflecting a return to a investor on an investment which has little, if any, livelihood of loss of principal or anticipated return on investment.

(x) Summation Discount Component. -- A discount rate expressed as the aggregate of a safe rate, risk rate, non-liquidity rate and management rate.

(B) Discussion. -- The capitalization rate will be determined annually by the Tax Commissioner through the use of generally accepted methods for estimating such rates. The rate so developed will consider a

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declining-terminal income series which is indicative of natural gas producing properties. The capitalization rate used to value natural gas properties will be developed considering (1) a discount component determined primarily by the summation technique, (2) a recapture component, and (3) a property tax component.

(1) Discount Component

(i) Summation Technique -- The summation technique will be given primary consideration in the valuation of natural gas producing property. The summation technique will determine a discount component which will be used to calculate the present value of the future income of the natural gas producing property utilizing the following four

(4) major sub-components:

- (1) Safe Rate
- (2) Risk Rate
- (3) Non-liquidity Rate
- (4) Management Rate

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The "Safe Rate" will be developed through review of quarterly interest rates offered on thirteen (13) week United States Treasury Bills for a period of three (3) years prior to the appraisal date. The "Risk Rate" will be developed through review of data resulting from an annual survey of lending institutions, such survey reflecting interest rates required on loans for acquisition and/or development of natural gas producing properties. This survey will be conducted for a three (3) year period prior to the appraisal date. Results of the survey will be compared to quarterly interest rates offered on thirteen (13) week United States Treasury Bills for the same three (3) year period. An interest differential will then be selected representing the "Risk Rate." The "Non-liquidity Rate"

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will be developed through an annual survey to determine a reasonable estimate of time that natural gas properties remain on the market before being sold. The market time thus determined will be used to identify United States Treasury Bills with similar time differentials in excess of thirteen (13) week Treasury Bills. The interest differential between these securities will be deemed to be representative of the "Non-liquidity Rate." The "Management Rate" will be developed through a survey of investment firms to identify charges for the management of investment portfolios.

- (iii) Bands-of-Investment/Market Comparison. -- Data permitting, the bands-of-investment and market comparison techniques will be used to verify the summation discount component.

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(2) Recapture Component -- Selection of a multiplier will be accomplished through access of a standard mid-year life present worth of one table premised on a compound interest rate. This table has a factor for recapture built into the table coefficients. Inclusion of a recapture component in the capitalization rate is therefore not appropriate.

(3) Property Tax Component -- This component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class III property.

(8) Multipliers. -- The multiplier combines mathematically the effects of average industry market price of natural gas, average industry well operating expenses, working and royalty interest, average production rate, average production decline rate, flush and settled production and a capitalization rate. [See § 11.06(e)(9)] This multiplier will not be constant for all natural gas producing properties. Each category defined below will have a separate multiplier. The multi-

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plier will be derived by conducting an income analysis of a typical West Virginia well based on the aforementioned variables and published in an annual report.

Separate multipliers shall be established by the Tax Commissioner for the following four (4) categories:

- (1) Working interest in settled production.
- (2) Working interest in flush production.
- (3) Royalty interest in settled production.
- (4) Royalty interest in flush production.

(9) EXAMPLE:

The income analysis chart will be in the following forms. The figures used in these charts are hypothetical values of what may be derived from the annual reports and are not to be considered actual figures, although they may approximate or duplicate the results of actual annual reports.

Variables

Annual Industry Production Rate = 6000 MCF

Working Interest = $\frac{7}{8}$ of production

Royalty Interest = $\frac{1}{8}$ of production

Average Industry Market Price = 2.60/MCF

Average Industry Operating Expenses = \$3000

Average Industry Production Decline Rate = 7%

Capitalization Rate = 15%

Gross Income = Working interest production
x \$2.60

Net Income = Gross Income - Operating
Expenses

Working Interest

	Total Production	Working Interest Production	Gross Income	Operating Expenses	Net Income	Capitalization Rate Present Worth of 1 Factor	Discounted Net Income
Year 1	6,000	5,250	\$13,650	\$3,000	\$10,650	.933	\$ 9,936
Year 2	5,580	4,883	12,696	3,000	9,696	.811	7,863
Year 3	5,189	4,540	11,804	3,000	8,804	.705	6,207
Year 4	4,826	4,223	10,980	3,000	7,980	.613	4,892
Year 5	4,488	3,927	10,210	3,000	7,210	.533	3,843
Year 6	4,174	3,652	9,495	3,000	6,495	.464	3,014
Year 7	3,882	3,397	8,832	3,000	5,832	.403	2,350
Year 8	3,610	3,159	8,213	3,000	5,213	.351	1,830
Year 9	3,357	2,937	7,636	3,000	4,636	.305	1,414
Year 10	3,122	2,732	7,103	3,000	4,103	.265	1,087
Year 11	2,903	2,540	6,604	3,000	3,604	.231	833
Year 12	2,700	2,363	6,144	3,000	3,144	.200	629
Year 13	2,511	2,197	5,712	3,000	2,712	.174	472
Year 14	2,335	2,043	5,312	3,000	2,312	.152	351
Year 15	2,172	1,901	4,943	3,000	1,943	.132	256
Year 16	2,020	1,768	4,597	3,000	1,597	.115	184
Year 17	1,879	1,644	4,274	3,000	1,274	.100	127
Year 18	1,747	1,529	3,975	3,000	975	.087	85
Year 19	1,625	1,422	3,697	3,000	697	.075	52
Year 20	1,511	1,322	3,437	3,000	437	.066	29
Year 21	1,405	1,229	3,195	3,000	195	.057	11
Year 22	1,309	1,145	2,977	3,000	—	.057	0

\$45,465

Total Discounted
Net Income

\$45,465 (Total Discounted Income)

\$13,650 (Year 1: Working Interest Production)

= 3.331 (Multiplier for Working Interest)

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Royalty Interest

	Total Production	Royalty Interest Production	Income	Capitalization Rate Present Worth of 1 Factor	Discounted Income
Year 1	6,000	750	\$1,950	.933	\$1,819
Year 2	5,580	697	1,812	.811	1,470
Year 3	5,189	649	1,687	.705	1,189
Year 4	4,826	603	1,568	.613	961
Year 5	4,488	561	1,459	.533	778
Year 6	4,174	522	1,357	.464	630
Year 7	3,882	485	1,261	.403	508
Year 8	3,610	451	1,173	.351	412
Year 9	3,357	420	1,092	.305	333
Year 10	3,122	390	1,014	.265	269
Year 11	2,903	363	944	.231	218
Year 12	2,700	337	876	.200	175
Year 13	2,511	314	816	.174	142
Year 14	2,335	292	759	.152	115
Year 15	2,172	271	705	.132	93
Year 16	2,020	252	655	.115	75
Year 17	1,879	235	611	.100	61
Year 18	1,747	218	567	.087	49
Year 19	1,625	203	528	.075	40
Year 20	1,511	189	491	.066	32
Year 21	1,405	176	458	.057	26
Year 22	1,309				0
					\$9,395

Total Discounted
Income

$$\begin{aligned} & \$9,395 \text{ (Total Discounted Income)} \\ & \$1,950 \text{ (Year 1: Royalty Interest Production)} = 4.818 \text{ (Multiplier for Royalty Interest)} \end{aligned}$$

Section 11.06(e)

(10) Personal Property Used in Natural Gas Production. -- The Tax Commissioner will annually derive and publish a report of the average value of the personal property used in natural gas production. This value will be multiplied by the number of producing wells on the property to determine the overall value of personal property used in natural gas production.

(f) Summary of Method for Valuing Active Natural Gas Producing Property. -- Each active natural gas well in West Virginia will be valued in the following way:

Working Interest

1. (Gross Receipts
Less Royalties) X (Multipliers) = (Working Interest
Value of Natural Gas
Producing Property)

PLUS

2. (Value for Personal
Property Used in Natural Gas Production) X (Number of Wells) = (Total Value of
Personal Property
Used in Natural Gas
Production)

Royalty Interest

1. (Royalties) X (Multiplier) = (Royalty Interest
Value of Natural Gas
Producing Property)

Section 11.06(g)

(g) Valuation of Assigned Natural Gas Reserves. -- The value per acre of assigned reserves shall equal the annual lease payment per acre times the multiplier.

A valuation schedule for assigned natural gas reserve properties will be determined annually by the Tax Commissioner on a regional basis. The Tax Commissioner will annually conduct a review of natural gas agreements transacted at arms length in all fifty-five counties to determine the annual lease payment per acre, as well as the lease term. The Tax Commissioner will also conduct a review of non-dry completions in all 55 counties as reported to the West Virginia Department of Mines, Office of Oil and Gas. The multiplier is the sum of the projected annual income stream during the lease term discounted in each year by a capitalization rate. The regions, the annual lease payment per acre, lease term, and multiplier will be published annually in a report by the Tax Commissioner and will be used to determine the values for assigned natural gas reserve property.

(h) Valuation of Unassigned Natural Gas Reserves. -- Unassigned reserves will be valued at the nominal rate of \$5.00 per acre. Unassigned reserves will be properties outside of the area of potential production as determined by the Tax Commissioner. The Tax Commissioner will annually

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publish a report on the regions which are classified as unassigned natural gas reserves.

(i) Valuation of Wells that Produce Both Natural

Gas and Oil. -- The valuation of these producing wells shall be determined by use of the methods described in § 11.05 for oil and § 11.06 for natural gas, excluding the value for personal property used in both methods. These values shall be summed with the value of the personal property to result in the overall value of the oil and natural gas producing acreage. The Tax Commissioner will annually derive and publish a report of the average value of the personal property used in oil and natural gas production. This value will be multiplied by the number of producing and shut-in wells on the property to determine the overall value of personal property used in oil and natural gas production.

Section 11.07(a)

11.07. Valuation of Timberland.

(a) General. -- The appraised value (market value) of timberland shall be determined on the basis of the potential of the timberland to produce future net income. Potential future net income is capitalized in order to determine a present value, which is the appraised value. The ability of a stand of timber to produce wood products for sale or use depends primarily on the quality of the soil and certain topographic and climatic features, and is expressed as site index. Site index is therefore the principal criterion, influencing the appraised value of timberland. These factors will be reviewed annually by the Tax Commissioner for necessary updating of the method described in order to properly reflect future changes in the market values of timberland.

(b) Timber Productivity Maps. -- The Tax Commissioner shall prepare, or cause to be prepared, timber productivity maps indicating Timberland Productivity Class of forest land soils as Excellent to Very Good, Good to Fair, or Poor.

(c) Timber Productivity Classes. -- Timber productivity classes shall be based on site index and the ability of the site to yield timber, measured in thousands of board feet (MBF) per acre (Scribner rule) or cords per acre at the end of a rotation of eighty (80) years.

Section 11.07(d)

(d) Appraised Value of Timberland. -- The appraised value (market value) per acre of timberland shall be calculated by dividing average annual net income by the capitalization rate. [Details of the procedure for determining appraised value are found in paragraph (f)].

(e) Definitions. -- As used in this regulation, the following terms shall have the meanings ascribed herein:

(1) "Average annual gross income" means the gross income per acre calculated by dividing the end-of-rotation income by eighty (80) years.

(2) "Average annual net income" means the average annual gross income per acre minus the annual management cost per acre.

(3) "Capitalization rate" means the rate determined annually by the Tax Commissioner or his designated agents through the use of accepted standard methods for calculating such rates.

(4) "Christmas Trees" means evergreen trees commonly known as Christmas trees, including fir, hemlock, spruce and pine trees, that will be sold for use as Christmas trees.

(5) "Forest land" is a broad term describing land whose dominant characteristic is the support of tree growth. Forest land can include timberland

Section 11.07(e)

but is to be distinguished from timberland for the purposes of this regulation.

(6) "End-of-rotation income potential" means the amount of income per acre calculated by multiplying the end-of-rotation volume by the stumpage price.

(7) "Gross income" means the end-of-rotation (80 years) gross income potential determined for each productivity class using the following formula:
$$\text{Yield (MBF and/or Cords Per Acre)} \times \text{Stumpage Price} = \text{Gross Income.}$$

(8) "Management costs" means the cost determined annually by the Tax Commissioner to be the average annual cost of maintaining and protecting a producing forest. Maintenance costs include costs of inventory, boundary survey, and security. Protection costs include costs of protection against wildfire, insects and diseases, and vandalism. Management costs will be determined as an average for the entire State or by regions, or by Timberland Productivity Classes and will be deducted from gross annual income per acre to obtain net annual income per acre.

(9) "Orchard" means a systematic planting of fruit trees as opposed to individual plantings for

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ornamental purposes.

(10) "Owner of timber" means any person who owns an interest in timber, including a sublessor and an owner of a contract right to cut timber. Such owner of timber must have a right to cut timber for sale on his own account or for use in his, hers or its trade or business in order to own an interest in timber that is subject to ad valorem property taxes.

(11) "Site index" means a method of measuring the productivity of a site to grow trees. It is the height that average dominant and codominant trees will attain at a given age. For ad valorem property tax purposes, it shall be the height of upland oaks at fifty (50) years of age.

(12) "Stumpage price" means the market value of standing trees (on the stump) prior to felling and removal, and is expressed in dollars per unit of volume (MBF or cords). For appraisal purposes, real stumpage price will be assumed to be stable over time, and shall be calculated by the Tax Commissioner from quarterly reports prepared by the Department of Natural Resources and other available sources. A five-year moving average

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shall be computed in order to minimize the effects of short-term fluctuations. Stumpage price shall be computed for each stumpage price region in order to reflect regional differences in markets, topography, and accessibility and shall be posted in the offices of the county assessors.

(13) "Stumpage price region" means a geographical region of the State, usually consisting of several counties, in which conditions of the timber, timber markets, topography, and accessibility are sufficiently similar to result in similar stumpage prices at any one point in time.

(14) "Timber" means and includes trees of any marketable species, whether planted or of natural growth, standing or down, located on public or privately owned land, which are suitable for commercial or industrial use.

(15) "Timberland" means:

(A) a parcel, or contiguous parcels, of at least ten (10) acres, that is (1) stocked with trees of any size or species capable of producing a usable crop of wood, or formerly having such tree cover within the last three years, (2) not currently developed or being

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used for non-forestry purposes, and (3) devoted primarily to the production, in reasonable commercial quantities, of timber and timber products. A parcel or contiguous parcels supporting growth capable of producing commercial crops will be presumed to be timberland unless precluded as set out in Section 11.07(e)(15)(B).

(B) The following types of land, however, are not considered to be timberland:

(1) A parcel, or contiguous parcels, on which there is standing timber that is less than ten (10) acres;

(2) Property withdrawn from wood products production for use as parks, orchards, pasture, tillable fields, nurseries, Christmas tree plantations, or other uses which may result in the existence of tree cover but where commercial utilization of the trees for wood products is precluded;

(3) Homesites or building sites, including adjacent areas which are occupied by trees used or manicured for ornamental

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purposes;

(4) Farm woodlots or forest lands which are part of a farm and which are used primarily to support the needs of the farm for timber, fuel, and other farming purposes. Once a portion of such land is sold or cut for timber, the forest land will be taxed as timberland property.

(5) Land within corporate limits, unless the land has been devoted principally to the production of timber products and managed for that purpose, on a continuous basis for the preceding five years.

(16) "Timberland productivity classes" means timberland classified as Class 1 (excellent to very good), Class 2 (good to fair), or Class 3 (poor), according to Site Index.

Section 11.07(e)

Table of
Timberland Productivity Classes

<u>Timberland Productivity Class</u>	<u>Site Index</u>	<u>Yield Per Acre over 80 Years*</u>	
		<u>MBF</u>	<u>Cords</u>
Class 1 (Excellent to very good)	80 (75 or more)	14.5	10.5
Class 2 (Good to fair)	70 (65-74)	9.7	14.9
Class 3 (Poor)	50 (less than 65)	1.5	20.7

*Scribner rule. Source: Schnur, G. Luther.
USDA Tech. Bul. No. 560. 1937
The Tax Commissioner may annually adopt a
different timber scale and to revise yield
annually as standards of timber utilization
change or as new information becomes available
on timber yields of forest stands..

(17) "Timberland productivity maps" means those maps prepared showing the productivity class of all timberland in this State. The primary source of information for preparation of these maps shall be the Soil Survey, published by United States Department of Agriculture (USDA) Soil Conservation Service.

(A) In those counties where soil surveys are not yet prepared, the best available information shall be used.

(B) For Webster and Pocahontas Counties:

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G. R. Trimble, Jr., "An Equation for Predicting Oak Site Index Without Measuring Soil Depth", Journal of Forestry, 62:325-327.

(C) For Wetzel, Doddridge, Braxton, Clay, and Gilmer Counties: L. R. Auchmoody and H. Clay Smith, Oak Soil-Site Relationships in Northern West Virginia. (USDA For. Serv. Res. Paper NE 434, 1979.)

(D) For Wayne, Lincoln, Boone, Logan, Mingo, and McDowell Counties: Unpublished results of research at West Virginia University (1983).

(f) Procedure for Determining Value. -- The following is a step-by-step procedure for determining the appraised value (market value) of timberland.

(1) All timberland is mapped according to productivity class See Section 11.07(e)(15) on USGS 7.5 minutes quadrangle sheets (1" = 2000'). The timberland productivity maps are then enlarged to a scale of 1" = 400' in order to conform to the scale of tax maps.

(2) Average stumpage price (5 year moving average) is determined by stumpage price regions from Department of Natural Resources quarterly

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reports and other information.

(3) End-of-rotation (80 years) gross income potential per acre is determined for each productivity class using the following formula.
$$\text{Yield (MBF and/or cords per acre)} \times \text{stumpage price} = \text{gross income.}$$

(4) Annual gross income potential per acre is determined using the following formula. Gross income potential per acre $\div$ 80 years = annual gross income potential per acre.

(5) Annual net income potential per acre is determined by deducting the annual management cost per acre from annual gross income potential per acre.

(6) Market value per acre is determined by capitalizing the net annual income per acre.

(7) A table is prepared showing market value of timberland by productivity classes.

(8) Mylar maps are prepared showing tax parcels and timberland productivity class.

(9) The appraised (market value) value of the property is calculated using the maps and table of timberland values. If a parcel contains two or more productivity classes, total value will be

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determined on a proportional basis, as in the
following example: 100 acre parcel, of which:

30 acres in Class 1
45 acres in Class 2
25 acres in Class 3
Appraisal = 30 AC x Class 1 Value
 +45 AC x Class 2 Value
 +25 AC x Class 3 Value
 Total Appraised Value Timberland

(g) Summary of Method of Determining Appraised Value. --

The formula to be used in determining the appraised value of
property categorized as timberland is as follows:

$$\begin{array}{rcl} \text{Appraised Value} & = & \frac{\text{Total Yield per acre x stumpage price}}{\text{80 Years}} - \frac{\text{Management Cost Per Acre}}{\text{Capitalization Rate}} \\ \text{Per Acre} & & \end{array}$$

(h) Valuation of less Than 10 Acres. -- A parcel, or
contiguous parcels, of forest land totalling less than ten
(10) acres shall not be considered to be timberland and
shall be valued based upon market comparables, without
considering the productivity capacity of the site for timber
yield.

(i) Valuation of Farm Wood Lots. -- Farm wood lots and
the parts of a farm which are in timber shall be included in
the valuation of farm property under W. Va. Code § 11-1A-10,
except when the timberland is a separate parcel or tract
entered in the landbooks, and except when the primary use of
the farmland is in commercial forestry or the growing of

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timber for commercial purposes. See W. Va. Code § 11-1A-3(f).

(j) Timberland Improvements. -- Improvements such as roads and service buildings that are a required (usual) part of timber management operations shall not be subject to an additional appraisal over and above the appraisal of the timberland. Improvements that are not a necessary part of the timber management operations, such as dwellings, cottages, hunting camps, and other recreational facilities, shall be subject to additional appraisals.

(k) Minimum Taxable Value of Timberland. -- The taxable value of timberland appraised as provided by these regulations may not be less than the appraised value of that land in the 1983 tax year.

Section 11.08

11.08. Valuation of Other Active Natural Resources

(a) General.

(1) Other active natural resource interests, such as limestone, fireclay, dolomite, sandstone, sand and gravel, and salt are some of the several estates in real property which may be owned either as a separate interest, or in conjunction with other interests, usually as fee ownership or as minerals ownership. If the other active natural resource interest is owned as a separate estate, either absolute or as a leasehold interest, West Virginia property tax law requires such ownership to be listed, valued and taxed based on its true and actual value.

(2) Other West Virginia natural resource interests, such as lead and zinc, manganese, iron ore, radioactive minerals, and oil shale, which at present are not being actively mined shall be valued in accordance with this regulation, when such interests are separated from the fee interest or begin being actively mined.

(3) These other natural resource interests may be owned without being mined. These other natural resources rights may exist where the natural

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resource is not actually present, or where the natural resource is unmineable or mined out.

(4) For valuation purposes, this regulation classifies other natural resource property ownership into the following categories:

- (A) Active
- (B) Active Reserves
- (C) Inactive Reserves
- (D) Mined-Out/Unmineable/Barren

(b) Definitions.

(1) Acres Mined. -- Acres mined per year is the average annual production as defined in 11.08(b)(4) divided by the product of the thickness in feet of the natural resource seam being mined as detailed in mining permit reports times the tons per acre foot, as set out below, times the recovery rate according to the actual recovery of the natural resource per acre being experienced at the mining operation.

For use in these regulations the following in-place tons per acre-foot figures will be used:

Limestone = 3,600 tons per acre foot

Sandstone = 3,600 tons per acre foot

Clay and Shale = 3,050 tons per acre foot

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Sand and Gravel = 2,400 tons per acre foot

Salt = 2,950 tons per acre foot

(2) Active Mining Property. -- This term refers to the mineable and merchantable natural resource on a parcel involved in a mining operation. For the purposes of determining active mining property, contiguous parcels under one ownership or owned or leased by inter-related businesses or individuals shall be treated as one parcel. The active mining acreage of any natural resource or resources on a parcel shall be calculated by multiplying acres mined times the determined life of the mine. If this calculation, however, results in an acreage figure that is higher than the total mineable acreage of that natural resource on that parcel, the lower figure shall be used. This calculation shall be made of each "other natural resource" activity being mined on the parcel.

For use in these regulations, the maximum active mining property for each natural resource will be as follows:

(A) Surface Limestone. -- The active mining property of a surface limestone mine shall be derived by multiplying ten (10) years times

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acres mined

(B) Deep Limestone. -- The active mining property of a deep limestone mine shall be derived by multiplying fifteen (15) years times acres mined.

(C) Sandstone. -- The active mining property of a surface sandstone mine shall be derived by multiplying ten (10) years times acres mined.

(D) Surface Clay and Shale. -- The active mining property of a surface clay and shale mine shall be derived by multiplying ten (10) years times acres mined.

(E) Deep Clay and Shale. -- The active mining property of a deep clay and shale mine shall be derived by multiplying fifteen (15) years times acres mined.

(F) Sand and Gravel. -- The active mining property of a sand and gravel mine shall be derived by multiplying ten (10) years times acres mined.

(G) Salt. -- The active mining property around each salt well shall be a maximum of 35 acres. After a well's first year of

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production, active mining property shall be derived by subtracting acres mined from the 35 acres.

(3) Active Reserves. -- This term means and includes the entire residual acreage of the mineable and merchantable natural resource being mined in excess of the active mining property, or the number of acres corresponding to 25 years times the acres mined per year [§ 11.08(b)(1)], whichever is less.

(4) Average Annual Production. -- The annual rate of natural resource production, in tons per fiscal year, ending June 30th of each calendar year, determined by a weighted average of three (3) years net production.

The weighted average shall be determined by multiplying the most recent year's production by .4, the previous two (2) years production multiplied by .3, and the resulting three (3) figures added together to arrive at the average annual production. However, if there is no production during the most recent fiscal year then the property will not be valued as active mining property for that year.

Where there has been no production during the

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second or third most recent fiscal year, the production for the current year will be factored by .5 and the production for the earlier fiscal year in which production existed will be factored by .5 and the resulting two figures will be added together to arrive at the average annual production.

If there was no production in both the second and third most recent fiscal years then the production for the most recent fiscal year will be factored by 1.0 and the resulting figure will be the average annual production.

(5) Barren. -- This term means and includes those properties where other natural resource rights are separately and/or individually owned, and the existence of any natural resource has not been established.

(6) Capitalization Rate. -- A rate used to convert an estimate of income into an estimate of market value. [For further explanation see § 11.08(a)(1)(C)]

(7) Inactive Reserves. -- Inactive reserves are those natural resource acres or portions thereof which are mineable and merchantable but are not

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active mining property or active reserves.

(8) Life of Mining Operation. -- The life of the mining operation (in years) shall be equal to the active mining property acreage divided by acres mined. The maximum mine life shall be ten (10) years for surface mines involving limestone, sandstone, clay and shale, and sand and gravel, and for wells used in the production of salt, and fifteen (15) years for deep mines involving limestone, and clay and shale. In calculating the years involved in the life of active mining property, all fractional figures will be rounded to the nearest whole number.

(9) Merchantable Natural Resource. -- A merchantable natural resource is one ordinarily extracted for sale and can usually be sold at a profit, or which is extracted for use in the manufacture of other products (e.g., salt for use in making paint and chemicals).

(10) Mineable Natural Resource. -- A mineable natural resource is one which could be profitably mined by judicious methods.

(11) Mined-Out. -- A natural resource, or any portion thereof, determined to be depleted by

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prior mining operations, and which is not mineable and merchantable by modern technology.

(12) Mining Operation. -- This term shall mean an enterprise engaged in actively obtaining or preparing to obtain a natural resource or its by-products from the earth's crust, including underground, surface and auger mines. Each mining operation may have more than one area designated as "Active Mining Property" as defined in Section 11.08(b)(2). This designation of "Active Mining Property" areas shall be determined as follows:

(i) If the mining operation is producing a natural resource from a Department of Natural Resources or Department of Mines permit, then that operation will be designated an "Active Mining Property." However, if the mining operation is producing from more than one natural resource under a Department of Natural Resources or Department of Mines permit, then each active natural resource will be designated as an "Active Mining Property."

(ii) If the mining operation is producing a natural resource at different locations, portals and/or faces under one specific

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Department of Natural Resources or Department of Mines permit, then that operation will be designated as one "Active Mining Property." However, if the production of the natural resource involves different mining techniques (e.g. surface, auger or deep mining method), or if mining sites are separate and generally independent, then such sites will be designated as separate "Active Mining Properties."

(13) Multiplier. -- This term shall mean the "present worth of one per period" for the life of the mining operation employing the capitalization rate determined in section 11.08(c)(1)(C), as determined by a standard mid-year life Inwood table.

(14) Royalty Rate. -- The royalty rates determined annually by the Tax Commissioner are the current market royalty rates for arms-length, willing-buyer, willing-seller, transactions for each of the different types of natural resources and types of mining operations derived in section 11.08(c)(1)(B). The royalty rates are deemed to be paid to each owner of a natural resource estate for all active-

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ly mined property.

(15) Unmineable Natural Resource. -- A natural resource which is not mineable and merchantable as defined above.

(c) Valuation Methods.

(1) Method for Determining Value of Active Mining Property.

(A) General. -- The value of active mining property shall be the average annual production times a royalty rate times a multiplier. In no case will the active mining property be valued at less than its value as inactive reserve property.

(B) Royalty Rate. -- For use in the formula prescribed by this regulation, the royalty rate(s) will be determined for each of the different types of natural resources and types of mining operations. These will include specific royalty rates for (1) limestone (dolomite) surface mine; (2) limestone (dolomite) deep mine; (3) sandstone (industrial) surface mine; (4) sandstone (aggregate) surface mine; (5) clay and shale surface mine; (6) clay and shale deep mine; (7) sand

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and gravel surface mine; and (8) salt wells. These royalty rates shall be established annually by the Tax Commissioner after review of recorded, willing seller-willing buyer arms-length natural resource property leases that have occurred in the State of West Virginia during the eight (8) years (W. Va. Code § 11-1A-3) prior to appraisal date, and through inspection of other appropriate information. This review will place a greater emphasis on the information and leases transacted during the most recent years. For those natural resources that are not involved in any recorded lease agreements, the Tax Commissioner will derive a royalty rate through surveys conducted with private appraisal and/or engineering companies, data provided by the West Virginia Geological and Economic Survey, West Virginia Department of Natural Resources, West Virginia Department of Mines, West Virginia Department of Highways, and other appropriate information from the specific natural resource companies involved. The Tax Commissioner will maintain

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and publish this survey (report) of royalty rates on or before March 31 of each year; will accept written public comment on the survey until May 1 of each year; and issue final royalty rates on or before July 1 of each year. This survey of royalty rates will be constructed to indicate the following: (1) county in which leased property is located; (2) deed book, page number; (3) lessor-lessee; (4) date recorded; (5) acreage involved; (6) type of mining operation; (7) consideration; and (8) a narrative on rates derived for those non-leased natural resources. From this survey, the Tax Commissioner will select the royalty rate(s) that best typify such transactions. In order to convert percentage royalty rates into specific value per ton rates, the Tax Commissioner will conduct a review of the specific natural resource selling prices in West Virginia by requesting such information from private purchasers, State Department of Highways, and West Virginia Geological and Economic Survey, as well as other informative sources available

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and select specific selling price rates(s) based on prices best typifying activity in each appraisal year. The selected selling prices per ton when multiplied by the percentage royalty rate will result in a price per ton royalty rate factor.

(C) Capitalization Rate. -- This capitalization rate will be developed considering the techniques found in general practice in the appraisal profession when developing an income approach valuation estimate. Below is a listing of terms and definitions employed in developing various capitalization rate indicators.

(1) Definitions.

(i) Bands of Investment Discount Component. -- A discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing.

(ii) Discount Component. -- A rate

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reflecting a provision for returning to an investor a sum of money equal to the aggregate of the anticipated return-on-investment over the economic life of an investment.

(iii) Economic Life Method of Recapture.

-- A method of developing a recapture rate by estimating the period of time an investment will produce a return and estimating an equal periodic rate of recapture of the investment over this return period.

(iv) Management Rate. -- A rate reflecting a return to an investor for the management of similar investment portfolios.

(v) Market Comparison Discount.

--A discount rate derived by dividing income net of the recapture component and property taxes by the arms-length selling price of the property.

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- (vi) Market Comparison Method of Recapture. -- A recapture rate estimated by dividing income net of the discount component and property taxes by the arms-length selling price of the property.
- (vii) Non-liquidity Rate. -- A rate reflecting a return to an investor representing the loss of interest on an investment arising from the time required to sell the investment.
- (viii) Property Tax Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the economic life of an investment.
- (ix) Recapture Component. -- A rate reflecting a provision for returning to an investor a sum of money equal to his investment.
- (x) Risk Rate. -- A rate reflecting a return to an investor necessary

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to attract capital to an investment containing a possible loss of principal and/or interest.

(xi) Safe Rate. -- A rate reflecting a return to a investor on an investment which has little, if any, livelihood of loss of principal or anticipated return on investment.

(xii) Summation Discount Component.-- A discount rate expressed as the aggregate of a safe rate, risk rate, non-liquidity rate, and management rate.

(2) Discussion. -- The capitalization rate as defined in Section 11.08(b)(6) will be determined annually by the Tax Commissioner through the use of generally accepted methods for estimating such rates. The rate so developed will consider a level-terminal income series which is indicative of active mining properties. The capitalization rate used to value active mining properties

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will be developed giving consideration
to the following three (3) approaches:

(a) Discount Component

(i) Market Comparison -- Sufficient sales data permitting, the market comparison technique will be employed as the primary indicator for an appropriate discount component. The market comparison discount component will be developed by dividing aggregate royalty rate income streams adjusted for recapture by verified recorded arms-length sales transactions for active mining properties which have occurred in the State of West Virginia during the eight (8) years (W. Va. Code § 11-1A-3) prior to the annual appraisal date. The market comparison discount component selected will be based upon those rate

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indicators best typifying activity in this eight (8) year research period. In selecting the discount component greater emphasis will be given to information from arms-length sales occurring during the most recent years of the study.

(ii) Summation Technique -- In the absence of sufficient data to statistically support primary consideration of the market comparison technique, the summation techniques will be given primary consideration. The summation discount component will be developed reflecting the following four (4) major sub-components:

- (1) Safe Rate
- (2) Risk Rate
- (3) Non-liquidity Rate
- (4) Management Rate

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The "Safe Rate" will be developed through review of quarterly interest rates offered on thirteen (13) week United States Treasury Bills for a period of three (3) years prior to the appraisal date. The "Risk Rate" will be developed through review of data resulting from an annual survey of lending institutions, such survey reflecting interest rates required on loans for acquisition and/or development of natural resource properties. This survey will be conducted for a three (3) year period prior to the appraisal date. Results of the survey will be compared to quarterly interest rates offered on thirteen (13) week United States Treasury Bills for the same three (3) year

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period. An interest differential will then be selected representing the "Risk Rate." The "Non-liquidity Rate" will be developed through an annual survey to determine a reasonable estimate of time that natural resource properties remain on the market before being sold. The market time thus determined will be used to identify United States Treasury Bills with similar time differentials in excess of thirteen (13) week Treasury Bills. The interest differential between these securities will be deemed to be representative of the "Non-liquidity Rate." The "Management Rate" will be developed through a survey of investment firms to identify charges for the management of

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investment portfolios.

(iii) Bands-of-Investment --

Data permitting the Bands-of-Investment technique will be considered in conjunction with the two (2) previously mentioned discount estimate components.

(b) Recapture Component. -- Selection of a multiplier will be accomplished through access of a standard mid-year life Inwood table. The Inwood table has a factor for recapture built into the table coefficients. Inclusion of a recapture component in the capitalization rate is therefore not appropriate.

(c) Property Tax Component -- The effective property tax rate will be estimated by multiplying the assessment ratio by the average statewide levy rate for Class III property.

(3) The surveys referenced in Section

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11.08(c)(1)(C)(2) will be conducted and tentative results published by the Tax Commissioner on or before March 31 of each year. Public comment on such surveys will be accepted until May 1 of each year, and final results will be issued on or before July 1 of each year.

(2) Valuation of Active Reserves.

(A) General. -- The value of each acre of active reserves shall be one-tenth of the per acre value of active mining property.

(B) Per Acre Value of Active Mining Property. -- Per acre value of active mining property equals the value of active mining property as described in § 11.08(c)(1) divided by the number of acres in the active mining property.

(C) In the event that the active reserve value per acre is less than the inactive reserve value per acre, the inactive reserve value per acre will be used.

(3) Valuation of Inactive Reserves. -- Inactive reserve values for limestone, sandstone, clay and shale, sand and gravel, and salt shall be deter-

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mined annually by the Tax Commissioner. This determination will be conducted by the Tax Commissioner after review of recorded willing seller-willing buyer arms-length natural resource property sales that have occurred in the State of West Virginia during the eight (8) years (W. Va. Code § 11-1A-3) prior to the appraisal date, and through inspection of other appropriate information. This review will place a greater emphasis on the information and sales transacted during the most recent years. For those natural resource properties which are not involved in any recorded sale agreements, the Tax Commissioner will derive the valuation through surveys conducted with private appraisal and/or engineering companies, data provided by the West Virginia Geological and Economic Survey, West Virginia Department of Natural Resources, West Virginia Department of Mines and the West Virginia Department of Highways, and other appropriate information as requested from the natural resource owners or producers. The Tax Commissioner will maintain and publish this survey (report) of inactive natural resource property sales on or before March 31 of each year; will

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accept written public comment on the survey until May 1 of each year; and issue the final values per acre on or before July 1 of each year. This survey of inactive reserve natural resource sales will be constructed to indicate the following:

(1) county in which the property is located; (2) deed book, page number; (3) grantor-grantee; (4) date recorded; (5) acreage involved; (6) natural resource involved; (7) consideration, (8) consideration per natural resource acre sold and (9) a narrative on values derived for those natural resources not involved in sales. From this survey, the Tax Commissioner will select the values per acre for each natural resource that best typify such transactions.

Also as part of this review, the Tax Commissioner will consider the effect of inactive mining properties being adjacent to active mining properties and active reserves in determining values under this section.

(4) Valuation of Mined-Out/Unmineable/Barren Other Natural Resource Properties. -- Properties in this category shall be valued at \$5.00 per surface acre.

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(5) Summary of Valuation of Methods.

Table 5 - Valuation of Other Natural Resources

(A) Properties with mineable/merchantable
natural resources shall be valued as follows:

Active Mining Acres

(Average Annual Natural Resource Production in Tons)	X	(Royalty Rate Per Ton)	X	(Multiplier)	=	(Active Natural Resource Real Property Value)
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Active Reserve Acres (Part of Active Operation)

(Total Active Reserve Acres)	X	(Per Acre Value of Active Min- ing Property)	X	10%	=	(Active Reserve Other Natural Resource Real Property)
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Inactive Reserve Acres (Leased or Permitted Acres - No Mining)

(Total Inactive Reserve Acres)	X	(Inactive Reserve Value Per Acre)	=	(Inactive Reserve Other Natural Resource Real Property Value)
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(B) Mined-out, unmineable and barren natural
resource properties shall be valued at five
dollars \$5.00 per surface acre.

(C) The total value for the natural resource
properties will be the sum of the value of
the active mining property(s), active re-
serves, the inactive reserves and the mined-
out/ unmineable/barren acres.

(D) If other real property interests are
owned in the natural resource acreage, then

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the value of those additional interests shall be added to the total value of the natural resource properties to arrive at the total real property value.

(6) Leasehold Interests. -- These regulations generally attribute the value of the natural resource to the owner of the natural resource property. In those circumstances, however, where the owner of the property is subject to a lease requiring the owner to permit mining at royalty rates substantially below current market values, the owner may petition the assessor, and on appeal, the Tax Commissioner, to attribute a portion of the value of the coal determined by this formula to the leaseholder.

Section 11.09(a)

11.09. Valuation of Commercial and Industrial
Real Property.

(a) General. -- This regulation describes the method for determining the appraised value (market value) of commercial and industrial real property other than natural resource real property, land utilized for farming purposes and operating public utility property.

(1) The appraised value (market value) of commercial and industrial real property is the price at or for which a particular parcel would sell if it was sold to a willing buyer by a willing seller in an arms-length transaction without either the buyer or the seller being under any compulsion to buy or sell. In determining appraised value, primary consideration shall be given to the trends of price paid for like or similar property in the area or locality wherein such property is situated over a period of not less than three (3) nor more than eight (8) years preceding the base year of the statewide reappraisal. Additionally, for purposes of appraisal of any tract or parcel of real property used for commercial or industrial purposes, including chattels real, the appraisal shall consider the following factors:

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- (A) The location of such property;
- (B) Its site characteristics;
- (C) The ease of alienation thereof, considering the state of its title, the number of owners thereof, and the extent to which the same may be the subject of either dominant or servient easements;
- (D) The quantity of size of the property and the impact which its sale may have upon surrounding properties;
- (E) If purchased within the previous eight years, the purchase price thereof and the date of each such purchase;
- (F) Recent sale of, or other transactions involving, comparable property within the next preceding eight years;
- (G) The value of such property to its owner;
- (H) The condition of such property;
- (I) The income, if any, which the property actually produces and has produced within the next preceding eight years; and
- (J) Any commonly accepted method of ascertaining the market value of any such property, including techniques and method

Section 11.09(a)

peculiar to any particular species of property if such technique or method is used uniformly and applied to all property of like species.

(2) There are two types of improvements which are considered in the appraisal process; these are improvements to the land and improvements on the land.

(A) Improvements to the land are land improvements, the value of which are included in the value of the land. Some examples of these improvements include privately owned drainage systems, driveways, walks etc.

(B) Improvements on the land are buildings and structures. They are valued separate and apart from the land.

(3) In addition to improvements, other important considerations affecting the value of land are:

- (A) Location,
- (B) Size,
- (C) Shape,
- (D) Topography,
- (E) Accessibility,

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- (F) Present use,
- (G) Highest and best use,
- (H) Easements,
- (I) Zoning,
- (J) Availability of utility,
- (K) Income imputed to land and
- (L) Supply and demand for land of a particular type.

(4) Each of these factors should be considered in the appraisal of a specific parcel. Some, however, may be given more weight than others.

(b) Generally Accepted Appraisal Methods Used to Establish the Value of Industrial and Commercial Real Properties.

(1) In determining an estimate of fair market value, the tax commissioner will consider and use where applicable, three generally accepted approaches to value: (A) cost, (B) income, and (C) market data.

A. Cost Approach. -- To determine fair market value under this approach, replacement cost is reduced by the amount of depreciation. In applying the cost approach, the Tax Commissioner will consider three types of

Section 11.09(b)

depreciation: physical deterioration, functional obsolescence, and economic obsolescence.

B. Income Approach. -- A property's present worth is directly related to its ability to produce an income over the life of the property. The selection of an overall capitalization rate will be derived from current available market data by dividing annual net income by the current selling price of comparable properties. The present fair market value of the property shall then be determined by dividing the annual economic rent by the capitalization rate.

C. Market Data Approach. -- The market data approach will be applied by considering the selling prices of comparable properties.

(2) Correlation. -- Once generated, the various estimates of value may be considered in determining a final value estimate. However, the income approach is ordinarily inappropriate for properties such as franchised restaurants, governmental properties, hospitals, etc. In these cases, the cost and/or market approaches may be more suitable

Section 11.09(b)

in estimating fair market value.

When possible, the most accurate form of appraisal should be used, but because of the difficulty in obtaining necessary data from the taxpayer, or due to the lack of comparable commercial and/or industrial properties, choice between the alternative appraisal methods may be limited.

(3) Industrial and Commercial Site Classi-

fication. -- For purposes of valuing active and residual industrial and commercial land in West Virginia, valuing sites shall be separated into four broad categories: heavy industrial sites, light industrial or commercial sites, industrial parks, and mine sites. These sites shall be further classified when appropriate into active and residual portions. These classifications will be considered when applying and establishing the valuation method to the industrial and/or commercial properties.

(c) Definitions.

(1) Active Industrial or Commercial Land. That portion of land used for industrial and commercial purposes.

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(2) Capitalization Rate. -- A rate used to convert an estimate of future income to an estimate of present market value.

(3) Commercial Property. -- Income producing real property used primarily but not exclusively for the sale of goods or services, including but not limited to offices, warehouses, retail stores, apartment buildings, restaurants and motels.

(4) Cost Approach. -- The appraisal process in which replacement cost of improvements, less all types of depreciation, is added to a land value in determining an estimate of the fair market value for improved real property.

(5) Economic Obsolescence. -- A loss in value of a property arising from "outside forces" such as changes in use, legislation that restricts or impairs property rights, or changes in supply and demand relationships.

(6) Economic Rent. -- The rental amount which a space or property would attain in the open market at the time of appraisal, whether it is lower, higher or the same as the actual contract rent.

(7) Fair Market Value. -- The highest price in terms of money that a property will bring in a

Section 11.09(c)

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.

(8) Functional Obsolescence. -- The loss of value due to factors such as excess capacity, changes in technology, flow of material, seasonal use, part-time use or other like factors. The inability to perform adequately the functions for which an item was designed.

(9) Heavy Industrial Site. -- An industrial site containing more than five (5) acres of physical plant.

(10) Income Approach. -- The appraisal process of discounting an estimate of future income into an expression of present worth.

(11) Industrial Parks. -- A parcel or group of parcels dedicated primarily to commercial and industrial development.

(12) Light Industrial or Commercial Site. -- An industrial site containing five (5) or less acres of land.

(13) Market Data Approach -- The appraisal process

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of examining sales data and translating such data into an estimate of present worth.

(14) Mine Sites. -- A parcel of land containing the mine portal and/or shaft, parking lots, water treatment facilities, mine fan areas, refuse piles and preparation plant sites.

(15) Physical Deterioration. -- A loss in value due to wear and tear.

(16) Replacement Cost. -- The cost of constructing a building or improvement having the same utility, but using modern materials, design, and workmanship.

(17) Residual Industrial or Commercial Land. -- That portion of a parcel of real estate that is currently non-productive in terms of the industrial or commercial activity located thereon. This classification of land would include land held for industrial expansion, land marginally suitable for industrial use and excess acreage.

(d) Valuation of Leaseholds in Industrial and Commercial Real Properties.

(1) General.

(A) A leasehold in real property is taxable for ad valorem property tax purposes

Section 11.09(d)

if it has a separate and independent value from the freehold. Great A&P Tea Co., Inc. v. Davis, W. Va., 278 S.E.2d 352 (1981).

Where leaseholds are of short duration, the rent paid will usually reflect income to the owner of the freehold commensurate with the fair market value of the real property.

Under ordinary conditions, the leasehold itself will not have any ascertainable market value. Consequently, in the normal circumstance, the appraised value of the freehold subject to a leasehold shall be determined in the same manner that the appraised value of similar commercial or industrial real property not subject to a leasehold is determined.

(B) However, under circumstances involving long-term leaseholds where the leasehold is itself a marketable asset of value, the leasehold shall be valued as hereinafter provided in this regulation. The leasehold interest being a chattel real shall be listed and taxed as Class III or Class IV tangible personal property depending on the location of the

Section 11.09(d)

freehold. See W. Va. Code §§ 11-5-3, 11-5-4 and 11-8-5.

(C) The appraised value of a freehold estate shall be the appraised value of the freehold determined without regard to the leasehold, minus the appraised value of the leasehold.

(2) Definitions.

(A) Leasehold. -- (Also known as a leasehold estate.) An interest in real property created by a lease contract. The leasehold is the right to occupy and use the property for the term fixed in the lease, at a stated rental, and subject to conditions set forth in the contract.

(B) Net Rental. -- An agreement specification whereby the lessor receives an annual rent net to him, with the lessee paying all property taxes, insurance and cost of building maintenance, as well as operating expenses.

(C) Gross Lease. -- A lease agreement wherein the lessor pays all fixed charges (property taxes, maintenance, etc.).

(D) Property Residual Method of Valuation. --

Section 11.09(d)

This method assumes that, at the expiration of the term of the lease, even though the building may have little value, the land will have a reversionary value. Both the income stream for the estimated useful life of the building and the reversionary interest in the land are discounted to present worth. This method is applicable where the building is old, the site under-improved, or the improvements have a short remaining useful or economic life.

(E) Leased Fee. -- The interest remaining in one who has granted possession and occupancy to another for a designated term under a lease contract. Generally, it is the interest of the owner in his property after it has been leased.

(F) Freehold Estate. -- An estate in land or other real property, of uncertain duration; that is, either of inheritance or which may possibly last for the life of a tenant at the least. For an estate to be freehold it must possess two characteristics:

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- (1) Immobility.
- (2) Indeterminate duration (no fixed termination of the interest.)
- (3) In valuing a leasehold:
 - (A) The total value of the property must be estimated and then allocated among the various interests in the property under the terms of the lease; and
 - (B) The appraiser must determine whether or not value has been created as a result of a favorable lease, in addition to the total value of the property.
- (4) In deciding whether a leasehold has value, and if so, what value to assign, the appraiser must:
 - (A) Estimate the value of the entire property, as though not encumbered by the lease, then
 - (B) Estimate the value of one of the partial interests, either the leasehold estate of the lessee or the leased fee of the lessor,
 - (C) The value of the partial interest thus arrived at is deducted from the value

Section 11.09(d)

of the entire property to obtain the value of the other partial interest.

(5) To value a leasehold interest, the appraiser shall consider the present (discounted) worth of the rent saving, when the contractual rent at the time of appraisal is less than the current market rent. If the land is improved by the lessee, then the value of the leasehold interest shall be the value of the saving in ground rent, if any, in addition to the value (not cost) of the improvements of the lessee. If the contractual rent is greater than the currently established market rent, the present worth of the difference shall be subtracted from the value of the improvement.

(6) When a property is under long-term lease to a prime tenant, such as a nationally-known chain store concern, and the estimated useful life of the building exceeds the term of the lease, the "property residual technique" of evaluation may be used along with other generally accepted appraisal techniques, i.e., cost and market data approaches.

Section 11.10(a)

11.10. Valuation of Commercial and Industrial
Personal Property.

(a) General. -- The object of these regulations is to provide absolute methodologies for appraising commercial and industrial furniture, fixtures, machinery, equipment, inventory, material and supplies.

(b) Definitions.

(1) Economic Obsolescence. -- A loss in value of a property arising from "outside forces" such as changes in use, legislation that restricts or impairs property rights, or changes in supply and demand relationships.

(2) Functional Obsolescence. -- Loss of value due to an inability to perform adequately the function for which commercial and industrial personal property was designed.

(3) Physical Deterioration. -- A loss in value due to natural wear and tear of commercial and industrial personal property resulting from age, use, abuse, etc.

(c) Situs.

(1) The situs of commercial and industrial furniture, fixtures, machinery, equipment, inventory, material and supplies shall depend upon an analy-

Section 11.10(c)

sis of the residence of the owner, and the location of the personal property and whether the personal property is subject to personal property taxation by another state and is taxed by the other state.

(2) All commercial and industrial personal property belonging to persons or corporations residing in this State, whether such property be in or out of the State shall be taxable, as personal property, unless the property be actually and permanently located in another state, and is subject to taxation as personal property and is actually taxed as personal property in the other state.

(3) All commercial and industrial personal property located within this State, though owned by persons or corporations residing in another state shall be taxable as personal property by this State.

(d) Valuation of Commercial and Industrial Personal Property.

(1) In determining an estimate of fair market value, three approaches to fair value will be considered and used where applicable: (A) cost,

Section 11.10(d)

(B) income, and (C) market. (For appropriate definitions and discussion of these methods, see §§ 11.09(a)(3)(9) and 10, and 11.08 (c)(1)(A)(B) and (C).

(2) Correlation -- Once generated, the various estimates of value will be considered in arriving at a final value estimate. However, the income approach to value is generally considered inappropriate in determining fair market value estimates of personal property for franchised restaurants, governmental properties, hospitals, etc. In these cases, the cost and/or market approaches may be more suitable in estimating fair market value.

When possible, an audit appraisal method should be used, but because of the difficulty in obtaining necessary accounting data from the taxpayer, or due to the lack of comparable commercial and/or industrial personal properties, a physical appraisal method may be necessary.

(3) Adjustments -- When physically inspecting commercial and industrial personal property for appraisal, the local assessor should take into consideration three types of depreciation; physi-

Section 11.10(d)

cal deterioration, economic obsolescence and functional obsolescence.

(4) Valuation of Common Commercial and Industrial Personal Property. --Frequently encountered

commercial and industrial personal properties common to numerous businesses within a taxing district shall be valued using current appraisal manuals furnished by the Tax Commissioner to local assessors. Some examples of such personal property are restaurant equipment, retail outlet equipment, and hotel and office furniture.

(5) Valuation of Specialized Industrial Equipment.

(A) Specialized industrial equipment must be valued using the most accurate information available from the taxpayer, e.g. original cost, date of acquisition, depreciation, salvage value, condition, etc. Comparable appraisals may be obtained from the Tax Commissioner, when actual cost information is not available.

(B) The Tax Commissioner will provide and periodically update lists of industrial machinery and equipment common to certain

Section 11.10(d)

industrial enterprises. These lists will assist local assessors by familiarizing them with industrial processes, equipment terminology, and equipment values.

Section 11.11(a)

11.11 Valuation of Intangible Personal Pro-
perty Including Stock, Accounts Receivable
and Stock in Banks and Capital of Savings
and Loan Associations.

(a) Scope. -- This regulation presecibes how the appraised value of Class I intangible personal property will be determined during the statewide reappraisal mandated by the West Virginia Constitution, article X, § 1b. This regulation does not define what property is subject to assessment for ad valorem property taxes. Second, this regulation does not prescribe how the appraised values determined under it will be adjusted on account of substitutions, accretions, improvements, additions, replacements, destructions, removals, casualties, acts of God, waste or any like occurrence.¹ Third, this regulation does not describe how the phase-in of increased valuation, if any, resulting from the first statewide reappraisal will apply to intangible personal property.² Fourth, this regulation does not prescribe when appraised values determined under it will first be used.³

¹W. Va. Code § 11-1A-14(b) requires the Tax Commissioner to propose a legislative rule covering this subject on or before September 1, 1984.

²W. Va. Code § 11-1A-22 relates to determination of the phase-in, application and limitations.

³W. Va. Code § 11-1A-14(c) prohibits use of the first statewide reappraisal until the Legislature directs their use.

Section 11.11(b)

(b) Promulgation. -- This proposed regulation was filed in the State Register on September 1, 1983, as required by W. Va. Code § 11-1A-11. Subsequent to the public hearing and comment period, this regulation was amended and refiled in the State Register on November 18, 1983. A second public hearing on December 19, 1983, will precede its submission to the Legislature in January, 1984. This regulation will not take effect until after an act of the Legislature is passed authorizing its promulgation.

(c) Construction. -- This regulation shall be applied, and interpreted in case of any ambiguity, in conformity with the West Virginia Constitution, art. X, §§ 1, 1a and 1b, and the several provisions of the West Virginia Code relating to the definition and determination of appraised value for purposes of ad valorem property taxation. In no event shall this regulation be construed as requiring any property to be appraised in excess of its market value, or as subjecting to tax any property that is exempt from ad valorem property taxation under laws of the United State or this State.

(d) Property Subject to This Rule. -- All Class I intangible property subject to statewide reappraisal having a taxable situs in this State shall be valued in accordance with this rule. The term "Class I intangible property" means and includes only notes, bonds, bills and accounts

Section 11.11(d)

receivable, stock and other similar intangible personal property: Provided, that it does not include:

- (1) Money and bank deposits which W. Va. Const. art. X, § 1a exempts from tax.
- (2) Bonds and other evidences of debt of this State, or of a political subdivision or authority thereof, which W. Va. Const. art. X, § 1 permits the Legislature to exempt from tax and which by law have been exempted from tax. See Appendix I for a list of statutes exempting these obligations and securities from tax.
- (3) Bonds and other evidences of debt which are direct obligations of the United States, or of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from ad valorem property taxation by the states and their political subdivisions.
- (4) Any other note, bond, bill, account receivable, stock or other evidence of debt that does not have a taxable situs in this State.
- (5) Shares of capital stock owned by residents of this State in corporations actually located in other states, and whose property is taxed by the

Section 11.11(d)

laws of such other states, are exempt from tax under W. Va. Code § 11-5-1 (1961).

(6) Any share, portion or interest owned by any person in a company, whether incorporated or not, when the property, stock or capital thereof is assessed to such company, is exempt from tax under W. Va. Code § 11-5-6 (1933).

(e) Species of Class I Intangibles. -- The general species or subclassifications of Class I intangible personal property are as follows:

(1) Notes. -- The term "note" means and includes any writing signed by the maker, containing an unconditional promise to pay a sum certain in money, on demand or at a definite time. The note may be payable to a named person(s) or to bearer, and may be either negotiable or nonnegotiable. The term "note" does not include money, documents of title or investment securities. Notes subject to appraisal include the following:

- (A) Personal and business notes receivable.
- (B) Notes and evidences of debt whether secured or unsecured.
- (C) Mortgage notes receivable.
- (D) Notes of debt held by corporations which

Section 11.11(e)

represent amounts due from subsidiary or affiliated corporations.

(E) Commercial paper and participation certificates, whether originally issued or resold.

(F) All loans and other receivables which are evidenced in writing by a note.

(2) Bonds and Debentures. -- The term "bond" means a certificate or evidence of debt on which the issuing company or governmental body promises to pay the bondholders a specified amount of interest for a specified length of time, and to repay the loan on the expiration date. In every case a bond represents debt. Commonly, bonds are secured by a mortgage or lien on specific property. Bonds subject to appraisal include the following:

- (A) Bonds and debentures of both domestic and foreign corporations.
- (B) Bonds and debentures of other states and their political subdivisions.
- (C) Bonds of public housing authorities organized under the laws of other states.
- (D) Bonds and other similar debt instruments

Section 11.11(e)

which are obligations of nonexempt quasi governmental agencies, commercial banks or other mortgage lenders, even though such instruments may be guaranteed as to payment by the United States Government.

(E) Bonds and debentures issued by commercial banks or other financial institutions.

(3) Bills and Accounts Receivable. -- The term "bills and accounts receivable" embraces only contract obligations, express or implied, owing to a person on open account. West Virginia Pulp and Paper Company v. Karnes, 137 Va. 714, 120 S.E. 321 (1923). Bills and accounts receivable subject to appraisal includes the following:

(A) Trade accounts, trade acceptances, open book accounts and charge accounts acquired in connection with any trade or business.

(B) Revolving type charge accounts, even though interest may be required on the balance due.

(C) Credit balances (including credits resulting from "short sale" transactions) on accounts with investment brokers and security dealers.

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- (D) Dealer reserves and finance reserves which are due from a person engaged in the business of banking.
- (E) The total amount of periodic or progress billings (excluding retainage) to which a contractor is entitled under terms of contracts in progress.
- (F) Accounts receivable of all persons and businesses whether operating on a cash basis or accrual basis for income tax purposes.
- (G) Accounts receivable of professional associations and professional persons (doctors, dentists, attorneys, accountants, etc.) when such accounts represent amounts owing to them for professional services.
- (H) Loans to affiliated companies and other intercompany receivables of corporations which are not evidenced by a note or similar instrument. See section 11.11(e)(1) for loans secured by a note.
- (I) Accrued rent which is due and payable but not received on or before the valuation date.
- (J) Royalties which are due but not received

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on or before valuation date.

(K) Receivables of banks under retail credit card plans.

(L) Accounts receivable which have a business, commercial or taxable situs in West Virginia, even through such accounts may be owned by a nonresident or foreign corporation. See section 11.11(g) for rule regarding situs.

(M) Loans and other receivables which are not evidenced by a note or similar instrument.

(4) Shares of Stock.

(A) Exemptions.

(1) W. Va. Code § 11-5-1 (1961) provides that "shares of capital stock owned by residents of this State in corporations actually located in other states, and whose property is taxed by the laws of such other state shall not be required to be listed for taxation."

(2) W. Va. Code § 11-5-6 (1933) provides that "[w]hen the property, stock or capital of any company, whether incorporated or not, is assessed to such

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company, no person owning any share, portion or interest therein shall be required to list the same or be assessed with the valuation thereof."

(3) Shares and units sold prior to the date of valuation are not subject to appraisal. However, if the proceeds from such sales are not received before the date of valuation, the person has an account receivable (credit balance) which is subject to appraisal.

(B) The term "stock" includes the following:

(1) Stock of both domestic and foreign corporations.

(2) Unregistered stock, restricted stock, letter stock and stock which is closely held and not traded on the market.

(3) Shares and units of ownership of mutual funds, investment trusts and investment funds, the value of which may not be reduced in whole or in part by reason of the nontaxable or exempt

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status of securities or obligations held in the fund or trust.

(4) Shares and units held in brokerage accounts, including those purchased on margin.

(5) Shares and units held or controlled, or both, by fiduciaries (executors, administrators, pension plans, guardians, etc.) which are reportable by the fiduciary.

(6) Shares of stock owned by corporations in affiliated or subsidiary corporations.

(7) Shares of stock in holding companies, including bank and insurance holding companies.

(8) Shares and units acquired through purchase, gift, inheritance or any other means as of the date of valuation, even if the certificates have not been received and are not in the owner's possession.

(9) Shares and units owned by or registered to residents of West Virginia as

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of the valuation date, even though such certificates may be physically located in another state.

(5) Other Similar Intangibles. -- The term "other similar intangible personal property" means any other evidence of indebtedness that is not a note, bond, bill and account receivable or stock. It includes the following:

- (A) Conditional sales contracts - written agreements whereby title to property sold remains with the seller until paid in full.
- (B) Investment contracts and accumulation plans.
- (C) Land sales contracts.
- (D) Repurchase agreements issued by financial institutions, notwithstanding that such may be secured by tax exempt government securities.

(f) Definitions. -- For the purpose of statewide reappraisal of property for ad valorem property taxes, the following terms shall have the meaning ascribed herein, unless the intention to give a more limited or broader meaning is disclosed by the context in which the term is

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used:

(1) "Bank deposits" means a deposit of money with any person engaged in the business of banking. It includes money on deposit in a checking, time, interest or savings account, and certificates of deposit (including money market certificates and All Savers Certificates). The term "person engaged in the business of banking" means and includes banks, building and loan associations, industrial banks, industrial loan companies, supervised lenders, credit unions and all other similar institutions, whether persons, firms or corporations, which are by law under the jurisdiction and supervision of the West Virginia Commissioner of Banking, the Federal Reserve Board or the United States Comptroller of the Currency.

(2) "Bills receivable" and "accounts receivable" mean debts owed to a person that arise in the normal course of business dealings and are not supported by negotiable paper.

1. Open account. -- Type of credit extended by a seller to buyer which permits buyer to make purchases without a note or security and it is based on an evaluation of the buyer's

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credit. Such account may be mutual, or provide open credit or open-end credit.

(2) Open Credit. -- Line of credit extended up to a certain amount by a merchant, bank or supplier so as to permit borrowings or purchases to such amount without posting security or reestablishing credit limit.

3. Open-end credit. -- Credit cards and "revolving charges" where one can pay a part of what he owes each month on several different purchases.

4. Trade acceptance. -- A trade acceptance means a draft drawn by a seller which is presented for signature (acceptance) to the buyer at the time goods are purchased and which then becomes the equivalent of a note receivable of the seller and the note payable of the buyer.

(3) "Bonds" includes annuity bonds, bearer bonds, callable bonds, chattel mortgage bonds, collateral trust bonds, convertible bonds, corporate bonds, coupon bonds, debenture bonds, general mortgage bonds, general obligation bonds, government bonds, guaranteed bonds, improvement bonds, income bonds, state bonds and subordinate bonds.

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(4) "Business situs" means the state where intangible personal property was acquired, used or otherwise has become localized in the conduct of a business activity so as to come within the protection of this State.

(5) "Cash" includes all United States and foreign currency and coin. Individual coin collections are treated as cash and exempt, unless the collection is being held or maintained for the purpose of future profit. In such case, the collection is valued as tangible personal property. Coin collections of dealers are considered to be inventory and are also valued as tangible personal property.

(6) "Commercial domicile" means the state or other location where a corporation or other business has established its principal office or chief place of business.

(7) "Credit card" means any instrument or device, whether known as a credit card, credit plate, or by any other name, issued with or without a fee by an issuer for the use of the cardholder in obtaining money, goods, services, or any other thing of value.

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(8) "Debenture" means a bond or promissory note backed by the general credit of a corporation and usually is not secured by a mortgage or lien on any specific property.

1. Convertible debenture. -- A debenture which may be changed or converted into some other security (e.g. stock) usually at the option of the holder.
2. Convertible subordinate debenture. -- A debenture which is subject or subordinate to prior payment of other indebtedness but which may be converted into another form of security.
3. Sinking fund debenture. -- A debenture which is secured by periodic payments into a sinking fund, commonly managed by a trustee for purposes of retiring such debt.
4. Subordinate debenture. -- A debenture which is subject to or subordinate to prior payment of other indebtedness.

(9) "Domestic corporation" means any corporation organized and chartered under the laws of West Virginia.

(10) "Evidence of debt" means a written instrument entered into by two or more parties whereby one

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party acknowledges in writing a debt of money as owning or payable to another party.

(11) "Foreign corporation" means any corporation organized and chartered under the laws of another state or foreign county.

(12) "Intangible personal property" or "intangible" property" means personal property which is not in itself valuable, but derives its value from that which it represents.

(13) "Letter of credit" means a letter whereby one person requires some other person to advance money or give credit to a third person, and promises to repay the same to the person making the advancement.

(14) "Money" means and includes cash, personal and business checks, cashiers' checks, certified checks, postal money orders, travelers' checks and express checks, bank credit card (Master Card, Visa, etc.) sales drafts or sales slips held by a merchant or other party for deposit with a bank, and other items commonly thought of and understood to be money. It does not include notes, bonds, bills and accounts receivable, stock and any other similar intangible personal property. See 48 Op.

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Att'y. Gen. 63 (1959); W. Va. Code §§ 11-5-3 (1961), defining "personal property," and 11-8-5 (1961), classifying property for ad valorem property taxation.

(15) "Note" includes circular notes (letters of credit), collateral notes, demand notes, installment notes, joint and several notes, joint notes, mortgage notes, negotiable notes, secured notes, time notes and unsecured notes.

(16) "Other similar intangible personal property" in the context of "notes, bonds, bills and accounts receivable, stock and any other similar intangible personal property" means and includes all other evidence of debt. See Greene Line Terminal Co. v. Martin, 122 W. Va. 483, 10 S.E.2d 901, 906 (1940).

(17) "Property situated in this State" means and includes:

(A) Property having legal situs in this State; or

(B) In the case of a person with a place of business located in this State and authorized to do business in this State and one or more other states of the United States or any

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foreign country:

(i) Any tangible property brought into this State from time to time or otherwise deemed to have situs in this State for purposes of ad valorem property taxation, and

(ii) Any intangible property held by such person, wherever evidenced thereof is situate. W. Va. Code § 11-1A-3(h).

(18) "Stock" means the capital or principal fund of a corporation or joint stock company derived from contributions of subscribers or the sale of shares. "Stock" is distinguishable from "bonds" and, ordinarily from "debentures," in that it gives the right of ownership in part of the assets of the corporation and the right to interest in any surplus after payment of debt. It includes the following: preferred stock, assessable stock, blue-chip stock, bonus stock, callable preferred stock, common stock, control stock, convertible stock, cumulative preferred stock, cumulative stock, donated stock, letter stock, listed stock, nonassessable stock, noncumulative preferred stock, noncumulative stock, nonvoting stock, no

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par stock, participation preferred stock, participation stock, par value stock, penny stock, premium stock, redeemable stock, registered stock, restricted stock, stock options, stock rights, stock warrants, treasury stock, unlisted stock and voting stock.

(18) "Taxable situs" means the state where intangible personal property is subject to taxation.

(19) "Value," "market value" and "true and actual value" mean the price at or for which a particular species of property would sell if it were sold to a willing buyer by a willing seller in an arms-length transaction without either the buyer or the seller being under any compulsion to buy or sell.

See W. Va. Code § 11-1A-3(i).

(g) Situs of Intangibles.

(1) In General. -- All intangible personal property owned by residents of West Virginia is generally considered to have a taxable situs in this State. In addition, intangible property acquired by a nonresident as a result of business activities conducted in West Virginia or otherwise having a business situs in this State, is also deemed to have a taxable situs in this State. The intent of

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this provision is to assure that nonresidents transacting business in this State and availing themselves of the laws of this State, either directly or through an agent, pay the same tax that would be imposed on residents in the same business.

(2) Considerations. -- Criteria applicable in determining whether intangible property has a tax situs in West Virginia includes the following:

(A) All intangible personal property owned by natural persons who are residents of West Virginia is considered to have a taxable situs in this State (regardless of where such intangible property was originally acquired or where it is currently physically located) unless the owner establishes that it has a tax situs in another state and that ad valorem property taxes are actually paid in that other state.

(B) All intangible property held or controlled by an administrator, executor, trustee, guardian, receiver or other fiduciary domiciled in this State is considered to have a taxable situs in this State (regardless of

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where such intangible property was originally acquired or where it is currently located) unless such person establishes that it has a tax situs in another state and that ad valorem property taxes are actually paid in that other state.

(C) All intangible personal property owned by a domestic corporation or by a foreign corporation having its commercial domicile in West Virginia, is considered to have a taxable situs in this State; Provided, that any intangible property of such corporations which (i) has acquired a business situs in another state, and (ii) is lawfully subjected to that state's intangible property tax is not subject to appraisal in West Virginia.

(D) In the case of a foreign corporation having its commercial domicile outside of West Virginia, any intangible personal property acquired in the conduct of business activities carried on in this State, or otherwise having a business situs in this State, is considered to have a taxable situs in West Virginia. Specifically, accounts re-

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ceivable, notes receivable and other evidences of debt of such foreign corporations doing business in West Virginia are considered to have a taxable situs in this State, regardless of where they were approved or evidence thereof is currently located if such debt or debts were created or acquired as a result of any one or more of the following:

- (i) The selling of property in West Virginia by an officer, employee or agent having or reporting to an office or other business location in this State.
- (ii) The delivery of property in West Virginia from a factory, warehouse or other stock of goods located in this State.
- (iii) Services performed in West Virginia by an officer, employee or agent having or reporting to an office or other business location in this State.
- (iv) The lending of money in West Virginia by an officer, employee or agent

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having or reporting to an office or
other business location in this State.

(h) Valuation of Class I Intangibles. -- Class I
intangible personal property shall be valued in the follow-
ing manner in order to assure that the appraised value of
such property is determined in an "equal" and "uniform"
manner throughout this State.

(1) Notes.

(A) Valuation of notes unsecured by realty. --

The value of a note is presumed to be the
amount of the unpaid principal as of the
valuation date. The taxpayer may establish a
lesser value by submitting to the Tax Commis-
sioner satisfactory evidence that the note is
worth less than the unpaid amount because of
the debtor's insolvency or similar reason.

(B) Valuation of notes secured by realty. --

All notes for the payment of money which are
secured by a written lien upon West Virginia
real property shall be valued at the prin-
cipal amount of the indebtedness evidenced
by the note. The principal amount of in-
debtedness shall equal the amount of the loan
financed, including any miscellaneous charges

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included in the amount financed, but shall not include unearned and unaccrued interest over the term of the loan. Such value may be reduced if the taxpayer submits to the Tax Commissioner satisfactory evidence that the note's face value is not the market value of the note.

(C) Accrued interest. -- Any accrued interest due on a note that is not paid on or before the valuation date, shall be included when determining the appraised value of the note.

(D) Burden of proof. -- The burden of proof shall be on the person seeking a lower or higher value than that determined under the preceding paragraphs to show by cogent evidence that such value is not the market value of the note.

(2) Bonds and Debentures.

(A) The appraised value of bonds and debentures which are listed and traded on a security exchange is the closing price of such bonds and debentures as quoted by the exchange on the valuation date.

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(B) The appraised value of bonds and debentures traded over-the-counter is the closing bid price as quoted by the over-the-counter market on the valuation date.

(C) If bonds and debentures are not regularly traded and quoted values are not available, the appraised value is the amount of the unpaid principal or face amount of the bond or debenture, unless cogent evidence is furnished to prove that the actual value is different than that amount.

(D) Any accrued interest due on bonds and debentures should be included in determining their appraised value.

(E) The burden of proof shall be on the person seeking a lower or higher value than that determined under the preceding paragraphs to show by cogent evidence that such value is not the market value of the bond or debenture.

(F) When the valuation date is not a business day, then the closing price on the last business day preceding the valuation date shall be the appraised value.

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(F) The value of debt obligations of the State of West Virginia and its political subdivisions, the United States of America, and agencies of the State of West Virginia and the United States of America, shall be exempt from taxation, unless the issuing authority consents to the taxation of its obligations.

(3) Bills and Accounts Receivable.

(A) The appraised value of all accounts receivable is the face value of such receivables as reflected on the books and records of the owner.

(B) In determining the face value of accounts receivable, a reasonable deduction will be allowed for uncollectable accounts, provided such deduction is based on generally accepted accounting principles.

(C) The appraised value of any account receivable which is in dispute or which is due from a party whose solvency is doubtful shall be estimated at its probable value.

(D) Any accrued interest due on accounts receivable should be included in determining

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the appraised value of such receivables.

(E) The burden of proof shall be on the person seeking a lower or higher value than that determined under the preceding paragraphs to show by cogent evidence that such value is not the market value of the bill or account receivable.

(4) Shares of Stock. (Except bank stock.)

(A) The appraised value of stocks listed and traded on a stock exchange is the closing price of such stocks on the valuation date as quoted by the stock exchange.

(B) The appraised value of stocks traded over-the-counter is the closing "bid price" on the valuation date as quoted by over-the-counter security dealers.

(C) If stocks are not listed or regularly traded on the open market, the appraised value shall be appraised by determining an average (weighted by the volume of sales) between the highest and lowest prices in arms-length sales during a reasonable period before the valuation date.

(D) If the appraised value of stocks cannot

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be established by use of (A), (B) or (C) above, an appraised value should be determined in accordance with generally accepted appraisal principles, giving consideration to such factors as adjusted book value, corporate earnings, nature and history of the business, dividend record, and comparison with the market price of stocks of comparable businesses.

(E) Generally no reduction is allowed in determining the appraised value of shares of stock because they are unregistered or restricted as to right of sale. However, there may be situations where some discount should be allowed in order to determine the marked value of the stock. The burden of proof shall be on the owner or holder thereof to prove by cogent evidence that a discount should be allowed and what the amount thereof should be.

(F) The so-called "blockage rule" (a reduction in the value of shares of stock due to the number or volume of shares owned) will generally not be used in establishing ap-

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praisal value. However, there may be situations where some discount should be allowed in order to determine the market value of the stock. The burden of proof shall be on the owner or holder thereof to show by cogent evidence that a discount should be allowed and the amount of the discount.

(G) The appraised value of shares of stock will generally not be increased or decreased because such shares represent either a majority or minority interest. However, there may be situations where some discount should be allowed in order to determine the market value of the stock. The burden of proof shall be on the owner or holder thereof to prove by cogent evidence that a discount should be allowed and the amount of the discount.

(H) If listed market values or quotations are not used to compute the appraisal value of shares of stock, a statement should be attached to the property tax report explaining the method used in appraising or determining the appraised value of such stocks.

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(I) Indebtedness incurred to purchase shares of stock may not be considered as a deduction in determining the appraised value of such shares.

(J) The burden of proof shall be on the person seeking a lower or higher value than that determined under the preceding paragraphs to show by cogent evidence that such value is not the market value of the stock.

(5) Shares of Bank Stock.

(A) West Virginia Bank Stock. W. Va. Code § 11-3-14 (1933) requires that the value of shares of stock in a West Virginia banking institution, national banking association or industrial loan company shall ascertained according to the best information which the appraiser may obtain. Valuation of such stock shall reflect consideration of the method set forth in § 11.11(h)(4), with the following exception:

(i) A proportionate share of the value of real estate owned by a West Virginia banking institution, national banking or industrial loan company shall be deducted

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from the total value of the bank stock (determined before any decreasing modification is made). Real estate shall be valued in the same manner as other commercial real property.

(ii) In order to eliminate the direct or indirect effect which debt obligations of the United States that are exempt from property taxes have on the value of bank stock, a proportionate share of the value of such debt obligation of the United States, shall be deducted from the total value of the bank stock (determined before any decreasing modification is made).

(B) Out-of-State Bank Stock.

(1) Bank stock in banks, banking institutions and banking associations held by West Virginia residents representing ownership in banks located outside the State of West Virginia shall be valued in the same manner as stock held in West Virginia banks. See Section 11.11(h)(5)(A).

(2) Whenever the stock represents

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ownership in banks located outside the State of West Virginia, and such stock is subject to intangible personal property tax by another state, with such taxes actually paid to such other state, the stock shall not be valued for taxation in this State.

(6) Stock or Capital of West Virginia Building and Loan Associations and Savings and Loan Associations. -- W. Va. Code § 11-3-14a

(1959) requires that the capital of West Virginia building and loan and savings and loan associations, and federal savings and loan associations, as well as the capital of such associations located in other states, shall be valued in the same manner as out-of-state bank stock See Section 11.11(h)(5).

(7) Other Similar Intangible Personal Property.

(A) The appraisal value of "other similar intangible personal property" for which specific valuation procedures are not provided shall be determined in accordance with generally accepted appraisal principles. Established market values shall be used for

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intangible property regularly traded (e.g. stock, bonds etc.). Otherwise, factors customarily considered in determining intrinsic value shall be used.

(B) Burden of proof. -- The burden of proof shall be on the person seeking a lower or higher value than that determined under the preceding paragraph to show by cogent evidence that such value is not the market value of the property.

APPENDIX I.

West Virginia Code Provisions
Exempting Government
Obligations and Securities
from Property Taxes

The following is a list of forty-six statutes which exempt specific bond issues from ad valorem property taxation.

- 75-6-8 Bonds issued by the State Building Commission for the purpose of financing the acquisition of land, construction, equipping and furnishing of a building or buildings, together with incidental approaches, structures and facilities.
- 7-3-7 Bonds issued by county courts to acquire real estate for, construct, equip, furnish and maintain a courthouse, hospital, or other public building or jail or regional correction center.
- 7-3-14 Revenue bonds issued by county courts to own, equip, furnish, operate, lease, improve and extend a public hospital, clinic, long-term care facility and other related facilities.
- 7-11-2 Bond notes, debentures, and other evidences of indebtedness of any parks and recreation commission created by a county commission.
- 7-12-10 Bonds, notes, debentures, and other evidence of indebtedness of county development authorities.
- 7-15-13 Evidences of indebtedness of county authorities.
- 8-16-11 Revenue bonds of municipal public works or boards issued for the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, maintenance, repair (including replacements) and operation of jails, jail facilities, municipal buildings, police stations, fire stations, li-

braries, museums, other public buildings, incinerator plants, land fill or other garbage disposal systems, hospitals, piers, docks, terminals, airports, drainage systems, flood control systems, flood walls, culverts, bridges (including approaches, causeways, viaducts, underpasses and connecting roadways), public markets, cemeteries, motor vehicle parking facilities (including parking lots, buildings, ramps, curb-line parking, meters and other facilities deemed necessary, appropriate useful, convenient or incidental to the regulation, control and parking of motor vehicles), stadiums, gymnasiums, sports arenas, auditoriums, public recreation centers, public recreation parks, swimming pools, roller skating rinks, ice skating rinks, tennis courts, golf courses, polo grounds, or the grading, regrading, paving, repaving, surfacing, resurfacing, curbing, recurbing, widening or otherwise improving of any street, avenue, road, alley or way, or the building or renewing of sidewalks.

- 8-19-4 Revenue bonds issued by a municipality for the acquisition, construction, improvement or maintenance of a public waterworks system.
- 8-20-5 Revenue bonds issued by a municipality to acquire, construct, establish, equip, repair, maintain and operate a combined waterworks and sewerage system.

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- 8-27-20 Revenue bonds and other evidences of indebtedness of municipal and/or county urban mass transportation system authorities.
- 8-29-13 Bonds, notes, debentures and other evidences of indebtedness of regional airport development authorities.
- 8-29A-13 Bonds, notes, debentures and other evidences of indebtedness of county airport authorities.
- 8-33-7 Bonds, notes, debentures and other evidences of indebtedness of municipal, county, and municipal county building commissions.
- 10-2A-10 Revenue bonds issued by county courts, municipal corporations or county boards of education to establish, construct, acquire, extend, equip and own, maintain and operate athletic fields of all types, stadiums, gymnasiums, field houses, and all other types of athletic establishments.
- 11-3-9 Bonds and other evidences of indebtedness sold by churches and religious societies for the purposes of securing money to be used in the erection of church buildings used exclusively for devine worship, or for the purpose of paying indebtedness thereon.
- 13-1-33 Bonds issued by the State of West Virginia or any political subdivision thereof for the purpose of acquiring, constructing and erecting, enlarging,

extending, reconstructing, improving or furnishing any building, library, museum, buildings for educational purposes, recreational parks, civic arenas, auditoriums, exhibition halls, theaters and colleges.

13-2-8 Refunding bonds issued by county courts, municipal corporations, or boards of education.

13-2A-10 Refunding bonds issued by any city, town, county, public service agencies, boards, commissions or departments having power to issue revenue obligations for the purpose of refinancing any work, undertaking, or project which the public body is or may hereafter be authorized to construct and from which the public body has heretofore derived or may thereafter derive revenues, including all improvements, betterments, extensions and replacements thereto, and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto.

13-2C-15 Revenue bonds issued by counties or municipalities to defray the cost of acquisition by construction, purchase, lease or otherwise an industrial or commercial development project including any buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in

land, water rights, franchises, machinery, equipment, furnishings, landscaping, utilities, railroad spurs and sidings, parking facilities, parking wharfs, approaches and roadways or any number or combination of the foregoing necessary or desirable in connection therewith or incidental thereto and includes, without limiting the generality of the foregoing, hotels and motels and related facilities, nursing homes and other health care facilities, facilities for participatory or spectator sports, conventions or trade show facilities, airport facilities, shopping centers, office buildings, residential real property for family units, mass commuting facilities, and any site, structure, building, industrial park, water dock, wharf or port facilities, fixtures, machinery, equipment and related facility, including real and personal property, or any combination thereof, suitable as a factory, mill or shop, or processing, assembly, manufacturing or fabricating project, or warehouse or distribution facility, or facilities for the extraction, production or distribution of mineral resources and related facilities, or sewage or solid waste disposal facilities, or facilities for the local furnishing of electric energy or gas, or facilities for the furnishing of

water, if available on reasonable demand to members of the general public or storage or training facilities related to any of the foregoing, or research or development facility or pollution abatement or control facility and includes the reconstruction, modernization and modification of any existing industrial project for the abatement or control of industrial pollution.

13-2D-12 Any revenue bond issued by a county court to acquire, construct, equip, improve, maintain or operate a public facility for the taking off and landing of airplanes, and all such appurtenances and facilities usual and convenient in connection with such facility.

13-2E-12 Any refunding bond issued by any city, town, village, county, public service district, sanitary district, political subdivision or any other similar public entity now or hereafter created, and the State of West Virginia acting through any of its agencies, boards, commissions or departments to finance any work, undertaking, or project which the public body is or may hereafter be authorized to acquire or construct and from which the public body has heretofore derived or may hereafter derive revenues, for the refinancing of which enterprise refunding bonds are issued under

this article, and such enterprise shall include all improvements, betterments, extensions and replacements thereto, and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto.

- 156-18 Revenue bonds issued by the State Armory Board for the acquisition, construction and maintenance of armories, arsenals, ranges, campgrounds, service centers, training areas, concentration areas, and warehouses used for the training, administration, operations, and maintenance of the national guard.
- 16-13-10 Revenue bonds issued by a municipality or sanitary district for the acquisition, construction and maintenance of public sewage collection and treatment systems.
- 16-13-22f Refunding bonds issued by municipalities or sanitary districts to pay or discharge its outstanding revenue bonds.
- 16-13A-21 Bonds issued by public service districts for the acquisition, construction and maintenance of public service properties providing water or sewerage services.
- 16-15-14 Bonds issued by a county or municipal housing authority for demolition and slum clearance, the

acquisition, repair and/or construction of low cost housing, stores, offices and community facilities.

- 16-18-10 Bonds and refunding bonds issued by the state or any political subdivision thereof for the purpose of acquiring slum or blighted areas and redeveloping them.
- 16-26-10 Revenue bonds issued by the West Virginia Solid Waste Disposal Authority for the purpose of reconstruction, enlargement, improvement, furnishing and equipping a solid waste disposal project.
- 17-16A-14 Revenue bonds issued by the West Virginia Turnpike Commission to finance construction of any express highway or turnpike.
- 17-17-19 Revenue bonds issued by the West Virginia Commission of Highways for corporations formed to acquire, construct, and maintain bridges.
- 18-11-25 Bonds issued by the West Virginia Board of Regents for the construction of parking facilities at West Virginia University.
- 18-11A-7 Bonds issued by the West Virginia University Board of Governors for capital improvements at West Virginia University.
- 18-11B-11 Revenue bonds, revenue refunding bonds and bonds issued for combined purposes, issued by the West Virginia University Board of Governors for university facilities, buildings and structures.

- 18-12A-7 Revenue bonds issued by the West Virginia Board of Regents for capital improvements at Marshall University.
- 18-12B-4 Revenue bonds, revenue refunding bonds and bonds issued for combined purposes issued by the West Virginia Board of Regents for capital improvements on a system basis at state institutions of higher learning.
- 18-23-16 Bonds issued by governing boards of West Virginia's institutions of higher education to provide, construct, erect, improve, equip, maintain, and operate gymnasiums, stadia, dormitories, homes, refectories, swimming pools, or such other structures or buildings for students, teachers, officers and employees at the various state institutions of higher education.
- 18-24-6 Bonds issued by the West Virginia Board of Regents for the acquisition, construction, maintenance, improvement and furnishing of student union buildings.
- 18-27-22 Income only from bonds issued by the Board of Regents to fund education loan financing programs.
- 20-4-5 Revenue bonds issued by the Director of the Department of Natural Resources to acquire funds to develop the state park and recreation system.

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- 20-5C-17 Revenue and refunding bonds issued by the West Virginia Water Development Authority to acquire or construct any public water or waste water facility.
- 29-8-10 Revenue bonds issued by the Blennerhassett Historical Park Commission to develop Blennerhassett Island and related locations in Wood County into a major educational, cultural and recreational attraction.
- 29-18-19 Revenue or refunding bonds issued by the West Virginia Railroad maintenance authority to finance railroad maintenance projects.
- 31-15-20 Bonds issued by the West Virginia Economic Development Authority to establish or improve an industrial subdivision project.
- 31-18-18 Bonds issued by the West Virginia Housing Development Fund for the purpose of financing land development and residential housing.
- 31-19-20 Bonds issued by the West Virginia Community Development Authority for the purpose of raising revenue to purchase the bonds of local government units.

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11.12. Valuation of Public Utility Property.

(a) General. -- These regulations establish general valuation methods for the appraisal of the various types 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.

(b) Definition.

(1) Bands of Investment Technique. -- A synthesis of capital components used in financing an investment.

(2) Capitalization Rate. -- A rate, used to convert an estimate of income to an estimate of market value.

(3) Cost Approach. -- 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 always be used to value public utility operating property, however, when such original cost is not available, replacement cost or reproduction cost may be considered.

(4) Economic Obsolescence. -- A loss in value of a property arising from factors such as changes

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in use, legislation that restricts or impairs property rights, or changes in supply and demand relationships.

(5) Fair Market Value. -- The highest price in terms of more 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.

(6) Final Assessed Values. -- Values established by the Board of Public Works as required by W. Va. Code § 11-6-11.

(7) Functional Obsolescence. -- A loss in value of a property due to changes in style, taste, or technology.

(8) Income Approach. -- The appraisal process of discounting an estimate of future benefits into an expression of present worth.

(9) Market Data Approach. -- The appraisal process of examining sales data and translating such data into an estimate of present worth.

(10) Market Comparables Technique. -- A process of reviewing recently sold properties that are

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similar in important respects to a subject property in order to arrive at an estimate of value.

(11) Original Cost. -- The initial cost paid for constructing or acquiring property.

(12) Physical Deterioration. -- A loss in value due to wear and tear in service.

(13) Public Service Corporation. -- Business entities contemplated by of W. Va. Code § 11-6-1 et. seq.

(14) Rate Base. -- That group of accounts or derivatives thereof, from the Uniform System of Accounts, on which a public utility is allowed a return on investment.

(15) Regulation. -- The process wherein fees charged for public utility services are reviewed by applicable federal and state regulatory bodies.

(16) Replacement Cost. -- 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.

(17) Reproduction Cost -- The cost, including material, labor, and overhead, that would be

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incurred in constructing an improvement having exactly the same characteristics as the improvement in question.

(18) Return on Investment. -- A margin of profit generally expressed as a percentage of investment capital.

(19) Stock and Debt Technique. -- A process of reviewing market trading prices of securities in order to arrive at an estimate of value.

(20) Tentative Assessments. -- Property valuation estimates furnished by the Tax Commissioner to the Board of Public Works in accordance with W. Va. Code § 11-6-9.

(21) Uniform System of Accounts. -- The most current system of accounting developed and required by state and federal regulatory bodies.

(22) Unit Rule -- An appraisal of an integrated property as a whole without any reference to the values of its component parts.

(23) Operating Property. -- 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

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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.

(c) Situs.

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

(2) When the income approach is used, the unit of value shall be allocated to the State of West Virginia using gross operating plant data after which

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

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(d) Valuation of Operating Public Utility Property.

(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.

(2) Generally Accepted Appraisal Methods. -- In determining tentative assessments the Tax Commissioner will consider, and use where applicable, three 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.

(A) Cost Approach. -- Recognizing that public service corporations are predominantly cost regulated, when the cost approach is used in the valuation process, original cost less applicable depreciation will be employed. In applying the cost approach, the Tax Commis-

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sioner will consider three types of depreciation; (a) physical deterioration, (b) functional obsolescence, and (c) economic obsolescence.

(B) 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, 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.

(C) 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

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stocks and bonds that enable reasonable valuation estimates to be made.

(D) Correlation. -- 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.

(3) Classifications of Public utility and Common Carrier Operating Properties.

(A) 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.

(B) 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

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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.

(C) 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.

(D) 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

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of Accounts prescribed for Telephone Utilities shall be used.

(E) 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 for Wire-Telegraph and Ocean-Cable Carriers shall be used.

(F) Airline Companies. -- Operating property for air carriers shall primarily include such properties as are considered as operating property by the Civil Aeronautics Board (CAB). 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.

(G) Interstate Motor Carriers. -- Operating property for interstate motor carriers shall primarily include such properties as are

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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.

(H) Interstate Railroads. -- Operating property for interstate railroads 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 Railroad Companies shall be used.

(I) Intrastate Railroads. -- Operating property for intrastate railroads shall primarily include such properties as are considered by the West Virginia Public Service Commission (PSC) as operating property. In determining which properties are properly

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included as operating property, the most recent Uniform System of Accounts for Railroad Companies as prescribed by the Interstate Commerce Commission shall be used.

(J) 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.

(K) 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

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for Class A and B, and Class C and D water utilities.

(L) 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.

(M) Carline Companies. -- Operating property for carline companies shall include consideration of Rolling Stock used in transportation of freight or passengers.

(N) 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

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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.

(O) 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.

Section 11.13(a)

11.13. Valuation of Vehicles, Watercraft and
 Aircraft.

(a) General. -- This regulation provides the absolute methodology for valuing all vehicles, watercraft and aircraft.

(b) Definitions.

(1) Vehicles. -- The term "vehicle" shall include, but is not limited to, automobiles, trucks, truck tractors, trailers, motor homes, campers, motorcycles, motorbikes and mopeds.

(2) Assessment Day. -- The term "assessment day" means the first day of July of each assessment year for ad valorem property tax purposes.

(c) Valuation of Automobiles.

(1) The Tax Commissioner shall merge a computer listing of all passenger automobiles registered in the State of West Virginia by owner of record on the assessment day of each year, with a computer tape listing the values of all vehicles as reflected by a current National Automobile Dealers' Association (NADA) appraisal guide. The result of this program will be a list of motor vehicle owners on assessment day for each county, together

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with the motor vehicles they own, and an exact appraised value for each motor vehicle. This appraised value will be the base retail value as listed by the NADA appraisal guide.

(2) The county assessor shall review the annual appraisal list of motor vehicles. When a motor vehicle which is subject to assessment has been omitted from the appraisal list, the assessor shall use the current NADA appraisal guide furnished by the Tax Commissioner for the month of July of the current assessment year to ascertain the base retail value of the vehicle.

(3) Vehicle models over eighteen years old which are not covered by NADA appraisal guides shall be valued by the assessor in the following manner:

(A) Vehicles displaying "antique auto" license plates shall be individually appraised using the best information available.

(B) All other vehicles over eighteen years old will be valued at a standard value of \$200.

(d) Valuation of Trucks, Recreational Vehicles, Motorcycles, Mopeds and Other Vehicles.

(1) The local assessor shall use a current ap-

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praisal guide published by NADA, or other recognized authority, and furnished by the Tax Commissioner for the month of July of the current assessment year to ascertain the base retail value of such vehicles.

(2) Older vehicle models in this classification which are excluded from recognized appraisal guides because of their age, shall have their last appraised value depreciated by ten percent (10%) per year until the value reaches two hundred dollars (\$200). Thereafter, the appraised value will remain constant for so long as the vehicle is owned by the taxpayer.

(e) Valuation of Watercraft. -- The Tax Commissioner shall annually purchase a nationally recognized comprehensive price listing service for watercraft such as power boats, bass boats, canoes, row boats, pontoon boats, cabin cruisers, etc. The Tax Commissioner shall supply this listing to each county assessor beginning July 1, 1985, for use in determining the appraised value of watercraft.

(f) Valuation of Airplanes.

(1) The Tax Commissioner shall purchase and furnish to county assessors an aircraft appraisal guide from a nationally recognized authority. The

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Tax Commissioner shall supply this listing to each county assessor beginning July 1, 1985, for use in determining the appraised value of the aircraft.

(2) The local assessors shall determine the appraised value of special radio equipment and radar and other avionic equipment purchased and installed in the aircraft. The total appraised value of the aircraft shall be determined based on the retail value of both the aircraft and its navigational equipment.

Section 11.14(a)

11.14. Taxpayer Returns.

(a) The Tax Commissioner shall print taxpayer return forms. Such forms shall be furnished to each assessor who will distribute said forms to taxpayers for completion and return.

(b) 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.

(c) Taxpayers reporting coal, oil, natural gas, timber, and other natural resources, properties, and all banks and savings and loan associations shall prepare property tax returns in duplicate. One copy shall be filed with the assessor of the county wherein the property lies; the other copy shall be filed with the State Tax Commissioner, P. O. Drawer 2389, State Capitol, Charleston, West Virginia 25305.

(e) All other taxpayers shall prepare one copy of appropriate property tax returns and file it with the assessor of the county wherein the real property lies, or where the taxpayer lives when reporting personal property.

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

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(g) All other property appraisal returns required by this rule shall be filed no later than November 1st of each year.

(h) The Tax Commissioner, for good cause shown, may grant an extension of filing deadlines. No assessor may grant such an extension of a deadline.

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