



State Tax Department
of West Virginia

Charleston 25305

FILED

MAY 22 PM 4:13

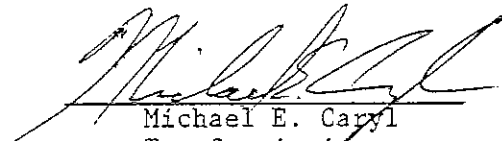
OFFICE OF THE
SECRETARY OF STATE

ARCH A. MOORE, JR.
GOVERNOR

Notice of Agency Approval

Legislative Rule: Electronic Data Processing System Network
For Property Tax Administration

The above titled legislative rule constitutes the official rule approved by the Tax Department on 15th day of May, 1985 and filed pursuant to law in the Office of the Secretary of State, State of West Virginia.


Michael E. Caryl
Tax Commissioner

May 22, 1985

Entered



State Tax Department
of West Virginia

Charleston 25305

FILED

MAY 22 PM 4:12

SECRETARY OF STATE

ARCH A. MOORE, JR.
GOVERNOR

May 15, 1985

The Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, WV 25305

Dear Mr. Hechler:

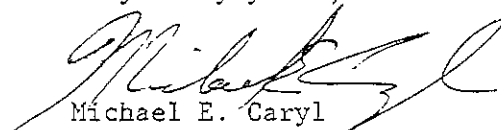
Attached are two copies of Approved Proposed Legislative Regulations: Electronic Data Processing System Network For Property Tax Administration, W. Va. Prop. Leg. Reg. 11-1A, Ser. 1A, § 21 (1985).

These regulations were filed in the State Register on March 13, 1985. Public comment was permitted through April 26, 1985. No written comments were received.

Upon filing these regulations in the State Register, sixteen (16) copies will be submitted to the Legislative Rule-Making Review Committee.

Submitted to the State Register on May 22, 1985.

Very truly yours,


Michael E. Caryl
State Tax Commissioner

MEC/jms
Attachments



FILED

State Tax Department
of West Virginia

Charleston 25305

ARCH A. MOORE, JR.
GOVERNOR

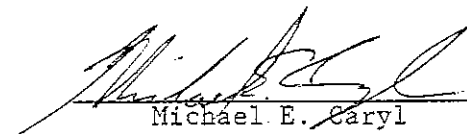
1985 MAY 22 PM 4:13

SECRETARY OF STATE

NOTICE

Legislative Rule: Electronic Data Processing System Network
For Property Tax Administration

The above titled legislative rule is hereby submitted to the
Legislative Rule-Making Review Committee.


Michael E. Caryl
Tax Commissioner

May 22, 1985
Entered

NOTE: The Notice of Agency Approval and this Notice may be
consolidated into one Notice of Approval and Submission
if you wish. It is verification of the action that is
important, not the form.

FISCAL NOTE FOR PROPOSED RULES

Rule No.: 11-1A § 21

Subject: Electronic Data Processing
System Network

Type of Rule: X Legislative Interpretive Procedural

Agency: State Tax Department Address: Rm. W-300, Capitol Building
Charleston, WV 25305

Authorized Representative: Michael E. Caryl Phone: 348-2501

	ANNUAL		FISCAL YEAR	
	Increase	Decrease	Current	Next Thereafter
1. Effect of Proposed Rule:				
Estimates Total Cost	\$	\$	\$	\$
Personal Services				
Current Expense				
Repairs and Alterations				
Equipment				
Others				

2. Explanation of above estimates.

W. Va. Code § 11-1A-21 requires the State Tax Commissioner to establish a statewide electronic data processing system network to facilitate administration of the ad valorem property tax and to promulgate reasonable rules to govern its operation. Additionally, each county is to lease, at its expense, the equipment required by the State Tax Commissioner. These statutory requirements are accomplished through this proposed section 21. Consequently, this proposed rule will not have any additional economic impact or fiscal consequences beyond those inherent in present statutory law.

3. Date: May 15, 1985

Agency: State Tax Department

Signature of Agency Head

Signature of Authorized Representative



KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
Deputy Secretary of State

Telephone: (304) 345-4000
Corporations: 345-8000



STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

RICH O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

PROPOSED RULES

STATE REGISTER FILING

=====

AGENCY Tax Department

CONTACT PERSON Dale W. Steager PHONE 348 - 5330

TYPE OF RULE Legislative

TITLE OF RULE Electronic Data Processing System Network For Property

Tax Administration

CHAPTER 11 ARTICLE 1A SERIES 1A

AUTHORITY W. Va. Code § 11-1A-1(f)

CHECK APPLICABLE ITEMS BELOW TO SHOW KIND OF ACTION BEING TAKEN

☒ NEW RULE

☐ NOTICE OF HEARING

☐ AMENDMENTS TO EXISTING RULE

☒ NOTICE OF AGENCY APPROVAL
(legislative rules only)

☐ REPEAL OF EXISTING RULE

☐ NOTICE OF AGENCY ADOPTION
(interpretive & procedural
rules only)

NOTE: ALL FILINGS REQUIRE ONLY
ONE COPY, EXCEPT FINAL
FILING OF RULES WHICH
REQUIRES AN ORIGINAL AND
A COPY.

☐ FINAL FILING

☐ FIRST EMERGENCY FILING

☐ SECOND EMERGENCY FILING

FILED

1985 MAY 22 PM 4:13

DEPARTMENT OF STATE
SECRETARY OF STATE

APPROVED PROPOSED

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE TAX DEPARTMENT

CHAPTER 11-1A
SERIES 1A
(1985)

Subject: Electronic Data Processing System Network
For Property Tax Administration

Filed in State Register
May 22, 1985

TABLE OF CONTENTS

		Page
Section	21. <u>Electronic Data Processing System Network</u> <u>For Property Tax Administration</u>	
	21.01 Procedural Matters	21.01
	21.02 Purpose of Rule	21.03
	21.03 Definitions	21.04
	21.04 Network Development Responsibility	21.08
	21.05 County Responsibility	21.11
	21.06 Network Operations	21.17
	21.07 Network Security and Safeguards	21.20
Index		21.26

Section 21. Electronic Data Processing System Network
 For Property Tax Administration

- 21.01 Procedural Matters
- 21.02 Purpose of Rule
- 21.03 Definitions
- 21.04 Network Development Responsibility
- 21.05 County Responsibility
- 21.06 Network Operations
- 21.07 Network Security and Safeguards

21.01. Procedural Matters.

- (a) General. -- These regulations are a proposed "legislative rule" as defined in W. Va. Code § 29A-1-2(d).
- (b) Scope. -- This proposed legislative rule relates to the electronic data processing system network to be developed and utilized in the administration of the ad valorem property tax imposed on taxable real and personal property.
- (c) Authority. -- This legislative rule is proposed pursuant to the authority of W. Va. Code §§ 11-1A-1(f) and 11-1A-21(d).

Section 21.01(d)

(d) Filing Date. -- This proposed legislative rule was filed in the State Register on May 22, 1985.

(e) Effective Date. -- This proposed legislative rule will not take effect until thirty (30) days after it is filed in the State Register pursuant to an Act of the Legislature authorizing its promulgation.

(f) Citation. -- This proposed legislative rule may be cited as W. Va. Prop. Leg. Reg. 11-1A, Ser. IA, § 21.____, page ____ (1985).

21.02. Purpose of Rule. -- This legislative rule is promulgated pursuant to the authority of W. Va. Code § 11-1A-21(d) wherein the Tax Commissioner is authorized to promulgate reasonable rules to govern the operation of the statewide electronic data processing system network. This legislative rule describes the operation of the network, the county operation requirements, and network expense sharing for equipment and facilities.

21.03. Definitions. -- As used in this rule, the following terms shall have the meanings ascribed herein, and shall apply in the singular or in the plural.

(1) Account. -- The term "account" shall mean for each county one entry on the land books or one entry on the personal property books.

(2) Assessment. -- The terms "assessed value" and "assessment" shall mean sixty percent (60%) of the market value of the property. See W. Va. Const., art. X § 1b and W. Va. Code § 11-1A-3.

(3) Compatibility. -- The term "compatibility" pertains to computers on which the same computer program can be run without appreciable alterations.

(4) Central Processing Unit Seconds or CPU Seconds. -- The term "Central Processing Unit Seconds" (CPU Seconds) means the amount of CPU time, measured in seconds, to complete an instruction or set of instructions.

(5) Data Base. -- The term "data base" shall mean a collection of information stored and organized in a precise manner so that the information can be used in the performance of various program instructions.

(6) Disk I/O. -- Transfer of parts or all of a record image to or from a magnetic disk device plus its relating index record (on-line CICS application only).

(7) Disk Storage. -- The term "disk storage" shall mean magnetic storage in which data are stored by magnetic recording on the flat surfaces of one or more disks.

(8) File. -- The term "file" shall mean a collection of data sets that are organized and stored, either on disk or tape as a unit, and are used to read and write information in an orderly fashion.

(9) Hardware. -- The term "hardware" shall mean the host computer itself and its peripheral equipment (terminals, printers, data storage devices, telecommunications equipment, etc.).

(10) Host Computer. -- The term "host computer" shall mean the computer that provides the primary services within a network.

(11) Information System Services Division or ISSD. -- The term "Information System Services Division" (ISSD), Department of Finance and Administration is the agency within State Government responsible for the administration and technical support of the statewide network and host computer used in the reappraisal project and system. ISSD is also responsible for determining the rate of charges for the data processing services which it provides. See W. Va. Code § 5A-7-1 et seq.

- (12) Network. -- The terms "network" or "electronic data processing system network" shall mean the statewide electronic data processing system network required by W. Va. Code § 11-1A-21.
- (13) On-line. -- The term "on-line" shall mean the hardware which is in direct contact with the host computer which responds to and takes instructions from a user.
- (14) Password. -- The term "password" shall mean the unique identification word assigned to each user and which, when entered, will allow the user to supply or retrieve information.
- (15) Print I/O. -- Causing or creating of a line of print either on a hard copy or on a magnetic device.
- (16) Printlines. -- The term "printlines" shall mean the number of lines printed for each document requested by specific users.
- (17) Property Books. -- The term "property books" shall mean the official land and personal property books maintained by the respective county assessors which contain the appropriate information for each account.
- (18) Statewide Reappraisal. -- The term "statewide reappraisal" shall mean the periodic reappraisal of all property in this State required by W. Va. Const. art. X, § 1b and W. Va. Code §§ 11-1A-1 and 11-1A-19.
- (19) Tape I/O. -- Transfer of a block of data to or from a magnetic tape. A block of data may contain one or several records images.

(20) Tape Storage. -- The term "tape storage" shall mean the computer storage medium similar to magnetic tape used in an ordinary sound tape recorder and upon which is recorded portions of the data base.

(21) Commissioner or Tax Commissioner. -- The terms "Commissioner" or "Tax Commissioner" shall mean the Tax Commissioner of the State of West Virginia or his delegate. See W. Va. Code §§ 11-1-1 and 11-1A-3(d).

21.04. Network Development Responsibility.

(a) The Tax Commissioner shall devise and cause to be established an electronic data processing system network to facilitate the administration of the ad valorem property tax imposed on real and personal property (tangible and intangible), with information obtained from the statewide property reappraisal to be entered in the network and to be maintained in a current mode through additional information being entered by the respective county assessor.

(b) In developing the network, the Tax Commissioner shall assure that all operational activities are thoroughly and completely planned. This includes but is not limited to the following operational activities:

(1) The Commissioner shall determine the most appropriate hardware and associated equipment to be utilized in the network, assuring such hardware and associated equipment is fully tested, functions properly and is compatible within the network.

(2) The Commissioner shall assure that the computer software is properly designed to meet operational standards and that it is fully tested prior to acceptance and utilization.

Section 21.04(b)

- (A) The software for the computer-assisted personal property appraisal system must be compatible with the software and hardware utilized by the State in its other computer assisted functions.
- (B) The design of the personal property portion of the tax accounting system must provide certain common data elements such as social security account number and federal employer identification numbers in such a way as to allow on-line access of information on a taxpayer basis.
- (C) The software shall be designed in such a manner so as to facilitate integration on a taxpayer basis as between real property and personal property.
- (3) The Commissioner shall assure the development of necessary and appropriate operational manuals, forms and training programs for state and county personnel.
- (4) The Commissioner shall coordinate activities and information with appropriate county officials to assure the availability of facilities suitable to accommodate network equipment.
- (5) The Commissioner shall enter into appropriate maintenance agreements in order to assure continued network operations.

(6) The Commissioner shall assure the network is in full and complete operation on or before July 1, 1985.

21.05. County Responsibility.

(a) Equipment Leasing. -- Each county shall acquire, at its expense, the data processing equipment required by the Commissioner and which is to be located in each county.

(1) A county may acquire the required recommended equipment on a lease or lease/purchase basis through the State procurement system or it may purchase or lease the required or recommended equipment on its own.

(2) If the county does not utilize the equipment recommended and required by the Commissioner, the county assessor must demonstrate the complete compatibility of any other equipment he acquires in lieu of, or in addition to that which is recommended or required for use.

(3) If a county assessor later chooses to utilize other compatible equipment through the State lease /purchase process, the county assessor must first either locate a buyer for the equipment to be replaced, or agree to use the equipment for other purposes and continue to be liable for the monthly payments: Provided, That if a buyer for the equipment is located,

Section 21.05(b)

such buyer must become responsible for the payment of any outstanding obligation on the equipment being replaced.

(4) The State Tax Department and the State Department of Finance and Administration shall prepare and file in the State Register a compilation of equipment compatibility requirements for assessors desiring to have alternate equipment to be utilized in connection with the network. The Tax Commissioner shall investigate thoroughly technological changes prior to those changes being incorporated into the network or becoming a requirement of the network.

(5) Upon completion of payment for equipment acquired on the lease/purchase basis through the State purchasing system, the equipment shall revert to the county at its option.

(b) County Personnel and Other Equipment. -- Each county shall provide, at its expense, the necessary staffing and operating personnel and all other communication equipment, to allow on-line interaction with the host computer or such other computer as the Tax Commissioner may designate.

(c) County Network Charges. -- Each county shall be charged by the Tax Commissioner for its proportionate share of the cost for use of the network, host computer and other

related services.

(1) The Tax Commissioner shall provide an estimate of fiscal year Network charges by March 15 preceeding the start of each fiscal year, for county budgetary purposes.

(2) The Tax Commissioner will bill each county based on the measures in this regulation: Provided, That no county's bill will exceed its budget estimate by more than ten percent (10%) unless the county's CPU usage is more than twelve percent (12%) above the previous fiscal year level and/or unless the county acquires and uses additional terminal and/or printer devices after the estimate has been made.

(3) The payments referred to in the immediately preceeding paragraph shall, upon receipt by the State, be deposited in the State Treasury into a revolving fund known as the "County Tax Fund."

(4) The quarterly statement rendered to the respective county commissions shall be composed of six (6) charges, the total of which shall be the amount to be paid to the Tax Commissioner within thirty days (30) after the quarterly statement is rendered.

(A) Equipment Charges. -- Equipment charges shall be the cost attributable to each county for the

equipment acquired through the State lease/purchase process.

(B) Insurance Charges. -- Insurance charges shall include the cost of necessary and required insurance on equipment leased or acquired through the State lease/purchase process for use in the network. The State shall offer a blanket insurance policy which will provide coverage in case of loss of equipment through theft, casualty, fire or any other occurrence. The respective counties shall have the option to participate in the policy provided by the State or to obtain appropriate insurance coverage independently: Provided, That for those counties which determine not to participate in the policy provided by the State, they must provide a statement that an appropriate insurance policy has been and will continue to be maintained: Provided however, That in case of any county which determines to not participate in the blanket insurance policy provided by the State and

Section 21.05(c)

which does not obtain or maintain an appropriate insurance policy which provides coverage suitable to the Tax Commissioner, the county commission shall indemnify the State for the amount of any loss to any equipment which otherwise would be covered by the blanket insurance policy provided by the State.

(C) Maintenance Charges. -- Maintenance charges shall include the actual monthly maintenance cost incurred by the county: Provided, That the equipment is acquired through the State lease/purchase program. If the county should acquire appropriate equipment through other means, it shall enter into its own maintenance agreement and it will not be billed by the State for any required maintenance activities.

(D) Data Circuit Charges. -- Data circuit charges are the charges attributable to each county for the telephone line connection between the county and the State host computer. The charge will be based on the number of accounts in each county with one account being one entry on

the land books and/or one entry on the personal property books. The formula for computing the data line charges for each county will be composed of four elements and functions as follows:

TDC = Total Data Line Charges, All Counties

TPA = Total Property Tax Accounts, All Counties

CPA = County Property Tax Accounts

CDC = County Data Line Share Charge

$$(CPA \div TPA) \times TDC = CDC$$

(E) Storage Charges. -- Storage charges are charges for the amount of space utilized within ISSD for both disk storage and tape storage. In effect, the counties rent disk or tape storage space for the respective number of accounts. It is an actual physical measurement calculated by ISSD.

(F) CPU Charges. -- The CPU charge is composed of the number of Input/Output transactions, the number of CPU seconds, the number of print lines and other activities. Each of these elements is measured by ISSD and the total charge passed directly through to the respective counties.

21.06. Network Operations.

(a) State Responsibility. -- Responsibilities of the Tax Commissioner in development and operation of the network shall include:

(1) The Tax Commissioner shall assure that the data accumulated during the statewide reappraisal is entered into the system prior to the point in time when the respective county assessors will be provided access to the network.

(2) The Tax Commissioner will assure that all appropriate assessment rules, tables, cost list, modifiers, etc. are entered into the system prior to the point in time when the respective county assessors will be provided access to the system.

(3) The State Tax Department will not have the authority to change certain county data such as prior assessed values. Data errors detected by the State Tax Department through edits will be forwarded to the respective county assessor who in turn will correct the erroneous information.

(4) The Tax Commissioner shall make available to every taxpayer, upon his request, through the network, the

description and appraised value of each parcel of real property during the statewide reappraisal and the method used to determine the appraised value.

(b) County Responsibility. -- Responsibilities of each county in the development and operation of network shall include:

(1) Each assessor shall enter all changes in the description, status, classification and value of real property and personal property situated in his county, such changes to be made no later than the calendar month following the month during which the changes occurred.

(A) Only counties have authority to change any information relating to their own parcels and accounts.

(B) No county possesses authority to change any information considered to be the domain or property of the State.

(2) County assessors shall, not later than March 15, 1985, convert, or cause to be converted, at county expense, any 1985 tax year assessment information not in the data files of the Tax Commissioner, and which was not the primary responsibility of the Tax Commissioner or any of his contractors to convert, for purposes of

Section 21.06(b)

the statewide reappraisal and the preparing of a system of assessments utilizing the results of the reappraisal.

(3) Beginning with tax collection year 1985, all land-books and personal property books shall be produced through the network described in this regulation: Provided, That for tax collection year 1985 only, the Tax Commissioner may allow property books to be produced by other means.

21.07. Network Security and Safeguards.

(a) General. -- The Tax Commissioner shall assure that the network and the data base is at all times safe and secure, and that safeguards are adequate to prevent unauthorized access.

(1) Password. -- A password shall be required for all users of the network. Each password for each user shall be unique. The password shall be utilized to control the usage of network functions and to assist in the monitoring of each user's activity in the network.

(2) User Name. -- The user name is associated with the password. Each assessment record updated by a user will also cause an audit record to be written which includes the user name. The user name will appear on audit reports to indicate the data changed by that user.

(3) District Name. -- The district name of each taxing district and corporation will be integrated into the system and only users with a need to know information relative to the properties located in the respective taxing district or corporation will have access to information about such properties.

(4) Assessors. -- Assessors in one county shall not be able to access information on properties located in another county without permission from the assessor of the county. Assessors in one county shall not be able to change information on properties located in another county.

(b) Secrecy of Returns and Return Information. -- Property tax returns and return information filed or supplied pursuant to W. Va. Code §§ 11-1A-1 et seq., 11-3-1 et seq., 11-4-1 et seq., 11-5-1 et seq. and 11-6-1 et seq., and information obtained by subpoena or subpoena duces tecum issued under the provisions of W. Va. Code § 11-1A-1 et seq. shall be confidential.

(1) No officer or employee of the State Tax Department, county assessors, county commissions or the board of public works shall disclose any returns or return information obtained by him in any manner in connection with his service as such an officer, member or employee unless he is subpoenaed.

(2) In order to ascertain that all property subject to assessment has been subjected to appraisal, the itemized description of the property listed shall not be confidential.

Section 21.07(b)

(3) The Tax Commissioner and all assessors shall withhold from public disclosure:

(A) the specific description of,

- (i) burglar alarms and other similar security systems held by any person, and
- (ii) stocks, bonds and other personal property held by a natural person; and

(B) information claimed by any taxpayer to constitute a trade secret or confidential patent information.

(4) Property descriptions withheld from public disclosure under the authority of the immediately preceding paragraph 21.07(b)(3) shall be subject to production and inspection for the purpose of any review, protest or intervention in the appraisal or assessment process, and under such reasonable limitations as the board of review, board of equalization and review or court shall require.

(5) For the purposes of this subsection 21.07(b) et seq. and for the succeeding subsections, the term officer or employee includes any former officer, member or employee.

(c) Disclosure of Information.

(1) Information made confidential by the immediately preceding subsection 21.07(b) shall be open to inspection by or disclosure to officers, members and employees of the State Tax Department, county assessors, county commissions and members of the board of public works whose official duties require such inspection or disclosure for property tax administration purposes. This information shall be open to inspection by the property owner providing such information and to his duly authorized representative.

(2) Information made confidential by the foregoing subsection 21.07(b) may be described in a judicial or administrative proceeding to collect or ascertain the amount of tax due: Provided, That such disclosure may occur only if:

- (A) the taxpayer is a party to the proceedings; or
- (B) such return information directly relates to a transactional relationship between a person who is a party to the proceedings and the taxpayer and such relationship directly affects the resolution of an issue in the proceeding.

(d) Reciprocal Exchange of Information. -- The Tax Commissioner may permit the proper officer, or his authorized representative, of the United States, the District of Columbia or any other state to inspect or obtain copies of reports, declarations or returns filed with the Tax Commissioner: Provided, That such other jurisdiction grants substantially similar privileges to the Tax Commissioner or to the Attorney General of this State.

(e) Penalties. -- Any officer, member or employee of the State Tax Department, county assessors, county commissions or the board of public works who violates W. Va. Code § 11-1A-23 and these regulations shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$1,000.00 or imprisoned for not more than one (1) year, or both, and also shall pay the cost of prosecution.

(f) Limitations.

(1) Any person protected by W. Va. Code 11-1A-23 and these regulations may waive in writing the secrecy provisions of W. Va. Code § 11-1A-23 and these regulations for such purpose and such period as he states, and the officer with whom such waiver is filed, may at his discretion release such information to designated recipient(s).

Section 21.07(f)

(2) The Tax Commissioner may publish or release statistics: Provided, That such statistics prevent the identification of particular reports, assessments and the appraised values of property.

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

APPROVED PROPOSED
WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX DEPARTMENT
LEGISLATIVE
CHAPTER 11-1A
SERIES IA
(1985)

Subject: Electronic Data Processing System Network
For Property Tax Administration

INDEX

<u>Subject</u>	<u>Section</u>
County Responsibility	21.05
Equipment Leasing	21.05(a)
County Personnel and Other Equipment	21.05(b)
County Network Changes	21.05(c)
Definitions	21.03
Account	21.03(1)
Assessment	21.03(2)
Compatibility	21.03(3)
Central Processing Unit Seconds or CPU Seconds	21.03(4)
Data Base	21.03(5)
Disk I/O	21.03(6)
Disk Storage	21.03(7)
File	21.03(8)
Hardware	21.03(9)
Host Computer	21.03(10)
Information System Services Division or ISSD	21.03(11)
Network	21.03(12)
On-line	21.03(13)
Password	21.03(14)
Print I/O	21.03(15)
Printlines	21.03(16)
Property Books	21.03(17)
Statewide Reappraisal	21.03(18)
Tape I/O	21.03(19)
Tape Storage	21.03(20)
Commissioner or Tax Commissioner	21.03(21)
Network Development Responsibility	21.04

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

Network Operations	21.06
State Responsibility	21.06(a)
County Responsibility	21.06(b)
Network Security and Safeguards	21.07
General	21.07(a)
Password	21.07(a)(1)
User Name	21.07(a)(2)
District	21.07(a)(3)
Assessors	21.07(a)(4)
Secrecy of Returns and Return Information	21.07(b)
Disclosure of Information	21.07(c)
Reciprocal Exchange of Information	21.07(d)
Penalties	21.07(e)
Limitations	21.07(f)
Procedural Matters	21.01
General	21.01(a)
Scope	21.01(b)
Authority	21.01(c)
Filing Date	21.01(d)
Effective Date	21.01(e)
Citation	21.01(f)
Purpose of Rule	21.02

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: State Tax Department

Subject: Proposed rules and regulations governing the operation of a state-wide electronic data processing system network, to facilitate administration of the ad valorem property tax on real and personal property

PERTINENT DATES

Filed for public comment: March 13, 1985
Public comment period ended: April 26, 1985
Filed following public comment period: May 22, 1985
Filed LRMRC: May 22, 1985
Filed as emergency:

ABSTRACT

Section 21 is a listing, by heading, of the sections contained in the proposed rules and regulations.

Section 21.01, "Procedural Matters", contains general provisions. Subsection (a) identifies the proposed rules and regulations as a legislative rule. Subsection (b) identifies the subject matter of the proposed rules and regulations as "the electronic data processing system network to be developed and utilized in the administration of the ad valorem property tax imposed on taxable real and personal property." Subsection (c) cites the authority for the proposed rules and regulations as W.Va. Code, §§11-1A-1(f) and 11-1A-21(d). Subsection (d) states that the filing date of the proposed rules and regulations is May 22, 1985. Subsection (e) identifies the filing date as being "thirty (30) days after [the proposed legislative rule] is filed in the State Register pursuant to an Act of the Legislature authorizing its promulgation." Subsection (f) offers a method of citation for the proposed rule.

Section 21.02 sets forth the purpose of the proposed rules and regulations, that being to describe "the operation of the network, the county operation requirements, and network expense sharing for equipment and facilities."

Section 21.03 contains definitions of terms used in the proposed rules and regulations.

Section 21.04 outlines the responsibilities of the Tax Commissioner in developing the electronic data processing system network. This in-

cludes planning in terms of selecting hardware and associated equipment, the design of software, hardware and software compatibility, on-line access of information on a taxpayer basis, and integration on a taxpayer basis between real property and personal property. Further, the Commissioner is charged with developing software manuals, forms, and training programs for state and county personnel; with assuring the availability of facilities suitable to accomodate network equipment; with entering into maintenance agreements as to network operations; and with placing the network in operation on or before July 1, 1985.

Section 21.05 describes the county government responsibility under the system.

Under subsection (a) of Section 21.05, methods are set forth whereby a county may acquire the necessary equipment required by the Commissioner to be located in each county. These methods include lease or lease/purchase through the State procurement system, or lease or lease/purchase of compatible equipment by the county on its own. The Commissioner and the Department of Finance and Administration will compile a list of equipment compatibility requirements for alternate equipment which may be used by the counties.

Subsection (b) of Section 21.05 requires each county to provide the necessary staffing and operating personnel and all other communication equipment necessary for on-line interaction with the host computer or such other computer as the Commissioner may designate.

Subsection (c) of Section 21.05 sets up various formulas for allocating the costs of establishing, operating, and maintaining the system. Charges for use of the network include equipment charges, insurance charges, maintenance charges, data circuit charges, storage charges, and CPU charges.

Before March 15 of each year, the Commissioner will provide an estimate of fiscal year network charges, to be used for county budgetary purposes [§21.05(c)(1)].

No county's bill for network charges will exceed its budget estimate by more than ten percent (10%) unless the county's CPU usage is more than twelve percent (12%) above the previous fiscal year level and/or unless the county acquires and uses additional terminal and/or printer devices after the estimate has been made [§21.05(c)(2)].

Payments due from the counties are to be paid within thirty days after each quarterly statement is rendered [§21.05(c)(4)], and will be deposited into the "County Tax Fund" in the State Treasury [§21.05(c)(3)].

Section 21.06 deals with network operations, outlining the state and county responsibilities.

State responsibilities for operations are set forth in subsection

(a) of Section 21.06.

Under §21.06(a)(1), the Commissioner is required to establish the data base for the statewide reappraisal prior to providing access to the system to the county assessors.

§21.06(a)(2) makes it the responsibility of the Commissioner to enter into the system "all appropriate assessment rules, tables, cost list, modifiers, etc." before providing access to the assessors.

Limitations are placed on the Commissioner under §21.06(a)(3), in that the department will not be permitted "to change certain county data such as prior assessed values." This subdivision also provides for data errors detected by the Tax Department to be corrected by the assessors, not the department.

§21.06(a)(4) requires the Commissioner allow a requesting taxpayer to have network information as to the description and appraised value of each parcel of real property during the statewide reappraisal and the method used to determine the appraised value.

Subsection (b) of Section 21.06 describes the county responsibilities in the development and operation of the network.

§21.06(b)(1) requires each assessor to enter all changes in the description, status, classification and value of real and personal property no later than the next calendar month following the month in which changes occur. Only counties have the authority to change information relating to their own parcels and accounts, but the counties cannot change information considered to be the domain or property of the state.

Subdivision (2) of §21.06(b) requires the assessors, by March 15, 1985, to convert 1985 tax year assessment information for the statewide reappraisal which is not in the Commissioner's data files and which was not the responsibility of the Commissioner or his contractors to convert.

§21.06(b)(3) states that beginning in 1985 all land books and personal property books shall be produced through the network system, but allows the Commissioner to waive this requirement for the year 1985 only.

Section 21.07 provides for network security.

§21.07(a) limits access through the use of passwords, user names, district names, and limitations on assessors' access to information in other counties.

Subsection (b) of Section 21.07 contains detailed provisions relating to the secrecy of tax returns and return information.

§21.07(c) describes the persons who are authorized to have access

to confidential information and the circumstances under which such information may be disclosed.

§21.07(d) allows a reciprocal exchange of information with other taxing jurisdictions outside of the State (federal government, other states, District of Columbia).

Subsection (e) of §21.07 contains a penalty for violation of the W.Va. Code, §11-1A-23 "and these regulations" which is identical to the penalty provision set forth in W.Va. Code, 11-1A-23(d), relating to disclosure of confidential information.

§21.07(f) describes limitations on the secrecy provisions contained in the Code and the proposed rules and regulations. Subdivision (1) allows a taxpayer to file a waiver of such provisions, and subdivision (2) authorizes the Commissioner to publish or release statistics so long as the statistics prevent the identification of particular reports, assessments and the appraised values of property.

AUTHORITY

Statutory authority: W.Va. Code, §§11-1A-1(f) and 11-1A-21(d)

W.Va. Code, §11-1A-1(f) provides as follows:

(f) The tax commissioner may prescribe all necessary forms and promulgate such rules and regulations as he believes necessary to carry out and enforce the provisions of this article. Such rules and regulations shall be subject to the provisions and requirements of the state administrative procedures act in chapter twenty-nine-a of this code: Provided, That all rules and regulations of the tax commissioner regarding ad valorem property taxes presently in effect on the effective date of this article shall remain in full force and effect until amended or repealed by the commissioner in the manner prescribed by law, or abrogated by the enactment of this article or other statutory provisions of this code.

The language of W.Va. Code, §11-1A-21(d) reads as follows:

(d) The commissioner may promulgate reasonable rules governing the operation of the statewide electronic data processing system network. Such rules shall, at a minimum, specify that each assessor shall enter all changes in the description, status, classification and value not later than the calendar month following the month during which the changes took place.

The rules shall provide for thorough and adequate safeguards to prevent unauthorized access to the system network and the data base. The commissioner shall make available to every taxpayer, upon his request, through the system, the description and appraised value of each parcel valued and the method used in determining the appraised value. The system shall be capable of providing for the assessment of each parcel and item of property at sixty percent of its appraised value and for the phasing-in of the first statewide reappraisal, as to each parcel and item of property and the phasing-in of any subsequent reappraisal as may be authorized by the Legislature.

ANALYSIS

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

No. Under the above-cited code provisions, the Commissioner has both general and specific authority to promulgate rules and regulations of the type proposed.

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

Yes. It is clearly the intent of the legislature that the Commissioner promulgate rules and regulations to establish, operate and maintain an electronic data processing system network of a nature described in the proposed rules and regulations.

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

There are several instances where the proposed rules and regulations appear to conflict with the provisions of W.Va. Code, §11-1A-1, et seq.

As indicated in the abstract, section 21.05(a) authorizes each county to procure the data processing equipment required by the Commissioner under that section of the proposed rules and regulations:

The county may acquire the recommended equipment on a lease or lease/purchase basis through the state procurement system or it may purchase or lease the required or recommended equipment on its own.

An examination of W.Va. Code, 11-1A-21(b) reveals language which says, "Each county shall lease, at its expense, the data processing equipment required by the commissioner to be located in each county." [Emphasis added.]

Whether by inadvertance or design, the Legislature did not provide for the purchase of equipment by the counties. Accordingly, it would be a policy decision for the Legislative Rule-Making Review Committee and the Legislature to determine whether the proposed rule exceeds the statutory authority and legislative intent insofar as the proposed rule authorizes county assessors to purchase data processing equipment rather than to acquire it by lease.

Another apparent conflict with the Code arises out of the language contained in §21.07(e). That section, dealing with penalties, would apply to violations of W.Va. Code §11-1A-23 "and these regulations . . ." The code section in question applies the penalty only to persons violating provisions relating to the confidentiality and disclosure of property tax returns and return information. On the other hand, the Commissioner has used language which would make the penalty apply to violations of the regulations which, of course, deal with much more than confidentiality and disclosure. If it is the intent of the Commissioner that this penalty apply only to matters of confidentiality and disclosure, then the regulations do not make this clear. If the Commissioner is, in fact, seeking to apply the penalty to a violation of any part of the proposed rules and regulations it would then appear that he has exceeded his statutory authority.

The proposed rules and regulations are also in conflict with the provisions of W.Va. Code, §11-1A-21(d). That code section, in pertinent part, requires the Commissioner to "make available to every taxpayer, upon his request, through the system, the description and appraised value of each parcel valued and the method used in determining the appraised value." In the proposed rules and regulations, §21.06(a)(4), the Commissioner is required to "make available to every taxpayer, upon his request, through the network, the description and appraised value of each parcel of real property during the statewide reappraisal and the method used to determine the appraised value." [Emphasis added.] By adding the words, "during the statewide reappraisal", the proposed rule limits the taxpayer's ability to receive information to a period of time during which the reappraisal is being conducted.

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

Yes.

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

Yes.

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

In Section 21.05(c)(2) of the proposed rules and regulations, there is set forth a limitation on the amount which the Commissioner can bill a county "unless the county's CPU usage is more than twelve percent (12%) above the previous fiscal year level . . ." The term "CPU usage" is not defined, though it may be presumed that it is that usage of the central processing unit which generates storage charges and CPU charges as those are defined in §21.05(c)(4)(E) and (F). In the opinion of counsel, the term "CPU usage" is important and should be clearly defined to avoid conflicts between the Commissioner and the various assessors.

Under the provisions of Section 21.06(a)(3), the proposed rules and regulations recite that the Department "will not have the authority to change certain county data such as prior assessed values." Also, in §21.06(b)(1)(B), it is stated that "[n]o county possesses authority to change any information considered to be the domain or property of the State." Counsel would suggest that the areas of responsibility for altering data should be clearly set forth in the rules and regulations with reasonable specificity.

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

W.Va. Code, §29A-3-4(b), in part, requires the filing of a fiscal note "itemizing the cost of implementing the rules as they relate to this State and to persons affected by the rules and regulation. Such fiscal note shall include all information included in a fiscal note for either house of the legislature and a statement of the economic impact of the rule on the State or its residents."

The fiscal note submitted by the Tax Department and attached to the proposed rules and regulations contains no financial information, but instead states that "this proposed rule will not have any additional economic impact or fiscal consequences beyond those inherent in present statutory law."

In the opinion of counsel, a complete fiscal note should be filed by the agency.