State Tax Department of West Virginia

Charleston 25305

DAVID C. HARDESTY, JR.
COMMISSIONER

April 28, 1980

TO ALL ASSESSORS
STATE OF WEST VIRGINIA

Enclosed you will find your copy of the "Guide for West Virginia Assessors".

If you desire additional copies, please contact Mrs. Wanda Mc Conihay, Appraisal Processing Section at 348-3940.

Very truly yours,

John R. Melton
Director
Local Government
Relations Division

JRM/wjm

State Tax Department of West Virginia
Charleston 25305

JOHN D. ROCKEFELLER IV
GOVERNOR

DAVID C. HARDESTY, JR.
COMMISSIONER

ARNOLD T. MARGOLIN
ASSISTANT COMMISSIONER

TO ALL ASSESSORS
STATE OF WEST VIRGINIA

Accompanying this letter you will find the newly revised "Guide for West Virginia Assessors" which has been prepared by the West Virginia State Tax Department for use by Assessors and their Deputies. The guide contains information explaining the law of governing certain duties and responsibilities of the assessor and his office staff. It also establishes uniform guidelines which are recommended by the State Tax Department for use by local authorities in determining the valuation of property for ad valorem tax purposes.

The information contained in this guide and its use by each county assessor's office will serve to improve and make more uniform property tax assessments. The guide has been designed to be easier for you to use and to provide more complete information than prior assessor's guides. If it responds to your needs, the effort it has taken to complete the revisions will have been worthwhile. If after reviewing the guide you wish to make any comments or suggestions, you may do so by writing directly to the State Tax Commissioner or to the office of the Local Government Relations Division of the State Tax Department.

Because assessors and their deputies and State Tax Department officials are involved in the joint administration of our property tax laws, we have found ourselves in a partnership which has been subject increasingly to public scrutiny. It is my belief that increased public awareness of the property tax laws and procedures of our State will continue. It is my hope that the information contained in this new "Guide for West Virginia Assessors" will be of assistance to you as we work together to achieve our statutorily mandated goal of fair and equal tax treatment for West Virginia taxpayers.

Sincerely,

David C. Hardesty, Jr.
State Tax Commissioner

DCHJr/wmt

Guide
For
West Virginia Assessors

West Virginia
State Tax Department
Charleston, West Virginia

FOREWORD

This "Guide for West Virginia Assessors" has been compiled to assist West Virginia assessors, their deputies and staff. It is to be used and construed in conjunction with Chapter 11 in its entirety, and Chapter 18, Article 9a, Section 11 of the West Virginia Code.

The guide has been subdivided into the following classifications:

1. Administration General
2. Assessment Procedures
3. Assessment of Real Property
4. Assessment of Personal Property
5. Assessment of Public Utility Property
6. Assessment of Specialized Properties
7. Valuation Guides for Natural Resources
8. Classification and Exemptions
9. Appeals
10. Programs Administered by the Tax Department
11. Subject Index

The Table of Contents gives a more detailed description of subject matter contained in these chapters. A subject index and a listing of all code references referred to in the guide are located in the back of the book.

This guide replaces all previous guides issued and is designed to be updated when needed. All information is current as of July, 1979.

The guide has been designed so that necessary changes may be made with minimum effort. Revisions will be mailed to your office and be numbered to indicate the sections of the guide which they revise, delete, or replace. The "loose-leaf" format should facilitate changes and enable the assessors and their staffs to keep current.

Suggestions concerning the guide and its contents may be sent to the State Tax Department in care of the State Tax Commissioner or the Local Government Relations Division.

HOW TO USE THE ASSESSORS' GUIDE

The "Guide for West Virginia Assessors" differs from the 1970 Assessors' Manual in several ways.

Unlike the "General" section of the 1970 Manual, the Guide is formatted as an easy-to-use reference book, enabling assessors and deputies to quickly locate answers for themselves and for taxpayers.

The various pricing guides which followed the "General" section of the 1970 Manual will now be issued as separate publications.

As a reference book, there are three suggested ways to find answers:

(1) Use the table of contents to find the general subject area where the answer may be found.

(2) Use the tabbed "Subject Index" at the back of the book to find the word or phrase of interest; or,

(3) Use the listing of subjects by West Virginia Code citation. This list immediately follows the "Subject Index".

When a new assessor is elected to his or her term of initial service, it would be desirable to thoroughly cover the material in the Guide. As the duties and functions become familiar to the assessor the "Guide" will then become a more useful source as reference material.

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HISTORY OF PROPERTY TAXATION IN WEST VIRGINIA

One of the underlying reasons for the creating of the State of West Virginia was the unequal taxation "suffered" under our mother state of Virginia.

The "Reform Convention" of 1851 was the scene of bitter contention between the delegates from eastern and western Virginia on the issue of the basis of representation in the General Assembly. In return for inadequate compromises on this question, the eastern bloc exacted constitutional provisions requiring true and actual value assessments of all property except slaves. On each slave over twelve years of age a tax could be levied equivalent to that on land valued at $300. Slaves under twelve were exempt from taxation. [1]

Thus, while western farmers were taxed on the full value of all their livestock, the eastern slave owners paid nothing on young negroes and paid on a fixed value below average market price on negroes of marketable age and quality. As slave prices rose this discrimination became more and more onerous to the "westerners".

During the convention which framed West Virginia's first constitution, Delegate J. W. Paxton provided an insight to the bitterness still festering below the surface by stating that while the secession of Virginia from the Union gave occasion to the movement for creating the State of West Virginia:

> "I apprehend that there can be little doubt in the mind of anyone that the fundamental cause of this division and desire for a new state may be found in the injustice and oppression which our people have suffered from unequal taxation, from oppressive taxation and unequal representation." [2]

In line with this sentiment, and largely because of the distasteful experience with the exemption of slave property in Virginia, the West Virginia Constitution of 1863 held the

[1] Ambler and Summers, West Virginia: The Mountain State, p. 171.

[2] Debates and Proceedings of the First Constitutional Convention of West Virginia.

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exemption of properties from taxation to a minimum---mainly the basic categories of governmental, religious and public school property. The question of equality was then resolved, the writers felt, by providing that all nonexempt property, both real and personal, would be taxed". . . in proportion to its value" and that all taxes were to be "equal and uniform."

The Constitution of 1872 retained the provision that: "taxation shall be equal and uniform throughout the State, and all property, both real and personal, shall be taxed in proportion to its value, to be ascertained by law." This Constitution further specified that: "no one species of property, from which a tax may be collected, shall be taxed higher than any other species of property of equal value."

Contrary to what might be assumed, the Constitutional requirement, dating from 1863, is not that property is to be assessed at its true and actual value, but rather that it: "shall be taxed in proportion to its value." However, the assessment basis of true and actual value and the concept of equality in property assessments has been the rule since the first legislature met.

Prior to a general reorganization of the State's fiscal administration in 1904, property was appraised for tax purposes about every ten years when the legislature desired a greater yield from the property tax and took this course rather than an acknowledged inequitable increase in tax rates alone. These reappraisals were made by appointed commissioners in each assessment district and the equalization of assessments was ordinarily performed by the Board of Public Works until the early 1900's.[3]

In the interval between reappraisals, Chapter 118 of the Acts of 1863 directed the assessor to assess land, buildings and other property: "to the best of his judgment by reference to the assessed value of property similarly situated . . . as valued by the assessor under the previous general assessment." [4]

Currently, the legislature stipulates that all property is to be assessed at its true and actual value through this language in Chapter 11, Article 3, Section 1 of the West Virginia Code:

> "All property shall be assessed annually as of the first day of July at its true

[3] Claude J. Davis, The County Assessor in West Virginia.

[4] Acts of the Legislature of West Virginia at Its First Session, Commencing June 20, 1863, Chapter 118, Secs. 28 and 31.

> and actual value; that is to say at the price for which such property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at forced sale . . . "

The statute further provides that in the assessment of owner-occupied residential property and farms, consideration is to be given potential rental income.

Prompted by a desire to protect agricultural interests during a depression of rare severity, the legislature, in 1875, exempted certain farm products from taxation. Exemption was later extended to the products of mines, salt wells, and certain manufactured articles. County assessors, imbued by the same motives, also reduced assessed valuations on taxable property.

As a result, total assessed valuations for the entire state in 1881 were around ten million dollars less than for 1875 with the direct result that the demand for increased governmental services could not be fully realized from available revenue.

Governor Jacob B. Jackson urged legislative repeal of all tax exemption statutes in 1879, but those affected were reluctant to surrender their benefits and prevailed when the legislature did not act.

Eventually, the State Supreme Court of Appeals held invalid all exemptions not specifically enumerated in the Constitution and the Governor ordered immediate assessment of all such property. However, owing to pressure exerted by farm groups and the absence of an enforcing statute, county assessors were slow to make their assessments conform to the "assessment order" of the Governor.[5]

The legality of certain exemptions from property taxation was questioned from time to time until 1901 when the Legislature created a State Tax Commission authorized to make a thorough investigation of the tax system. Its final report, made in October, 1902, emphasized the urgent need for a constitutional convention. However, revision of the tax system was effected

[5] Ambler and Summers, West Virginia: The Mountain State, p. 284.

without a constitutional convention, or even a constitutional amendment, in 1904. The key statute, enacted by the legislature in special session, simply required the assessment of all real and personal property at its true and actual value and permitted no exemption except for property used for educational, religious and governmental purposes. The office of State Tax Commissioner was created and given general supervisory control over property assessments and the assessment of public utility property was placed in the hands of the Board of Public Works. The legislature also fixed maximum levies upon each $100 assessed valuation of general property for state and school purposes and authorized the county courts to equalize and alter assessments.

Governor William Dawson was elected in 1904 on a platform of tax and assessment reform and implemented the 1904 tax reform laws with great success. The total assessed valuation of property in West Virginia in 1904 was $278,879,659. In 1911, this figure had increased to $1,148,006,006 --- over 300%. The assessed value of real estate tripled and that of public utility property increased nearly 900% from $30,043,300 to $290,523,500.[6]

During this period the legislature sought to prevent local taxing units from imposing excessive burdens on the increased valuations by specifying maximum rates for specific purposes; increased the powers and duties of the State Tax Commissioner; and, authorized the Governor to remove an assessor from office for refusal to comply with the law.

In 1926 a constitutional amendment setting a maximum tax rate of fifty cents per one hundred dollars valuation on money, notes, bonds, and accounts receivable was put on the ballot in the belief it would induce increased reporting of intangible personal property leading to increased total tax receipts. This amendment was rejected by the voters by a vote of 159,653 to 111,927. It was, however, a prelude to the important tax limitation amendment of 1932 providing for the classification of property with a maximum rate for each class.

The tax limitation amendment of 1932 was approved primarily to force a substantial reduction in property taxes and prevent real estate from being sold or forfeited for nonpayment of taxes during an era of economic depression of unprecedented harshness and duration.

[6] West Virginia Tax Commissioner, Biennial Report, 1911-12 and 1913-14.

According to its provisions, taxable property in West Virginia is divided into four classes, with a different rate for each class. The four classes and the maximum rates on each are as follows:

Class I - Farm equipment and machinery, products of agriculture while owned by the producer, intangible personal property excepting money and bank deposits.[7] Maximum rate: Fifty cents on each one hundred dollars assessed valuation.

Class II - Owner-occupied residences and farms occupied and cultivated by owners or bona fide tenants. Maximum rate: One dollar on each one hundred dollars assessed valuation.

Class III - All other property exclusive of Classes I and II situated outside municipalities. This class includes, but is not limited to, business and rental property, inventories, household goods and automobiles. Maximum rate: $1.50 on each one hundred dollars assessed valuation.

Class IV - All other property exclusive of Classes I and II situated within municipalities. This class would include properties similar to those in Class III. Maximum rate: $2.00 on each one hundred dollars assessed valuation.

The overall maximum rate for each of the four classes has been broken down into maximum rates for state, county, school, and municipality as shown in the following table:

Maximum Property Tax Rates
(In cents per $100 valuation)

Type	Class I	Class II	Class III	Class IV
State	.25	.50	1.00	1.00
County	14.30	28.60	57.20	57.20
School	22.95	45.90	91.80	91.80
Municipal	12.50	25.00	-----	50.00
TOTALS	50.00	100.00	150.00	200.00

[7] Money and bank deposits were exempted from the property tax by a 1958 Constitutional amendment.

The Tax Limitation Amendment reduced the rigidity of the overall maximums by providing that tax rates could be as much as 50 percent in excess of the maximum for a period of three years. In order to levy in excess of the limits, the levying body is required to submit the question of an excess levy to the voters of the taxing unit concerned.

In 1958, the voters of the state approved the Better Schools Amendment which permits the county boards of education to exceed authorized tax rates by 100 percent for a period of five years, following approval by those voting on the question. In addition, the amendment permitted the laying of taxes above and beyond the maximum authorized rates for the payment of principal and interest for bonded school debt, which cannot be in excess of five percent of the total assessed value of taxable property in the county.

The approval of 60% of those voting is required in order to exceed the maximum tax rates stipulated by the Tax Limitation Amendment.

The Tax Limitation Amendment, coupled with the inclination of the county assessors to keep property taxes at a minimum through failure to assess at the statutory basis, resulted in an immediate sensational drop in property tax revenue as shown in the following table:

Total Property Tax Levies in West Virginia, 1929-1955
(In thousands of dollars)

Year	Total Levy	Percentage Increase (Decrease)
1929	54,034	
1931	50,657	(6.25)
1933	27,212	(46.28)
1935	26,296	(3.37)
1937	27,388	4.15
1939	28,848	5.33
1941	29,254	1.41
1943	29,884	2.15
1945	29,492	(1.31)
1947	33,836	14.73
1949	42,013	24.16
1951	45,719	8.82
1953	49,885	9.11
1955	54,564	9.38

Source: Biennial Reports of West Virginia State Tax Commissioner.

As can be noted in the previous table, the total taxes levied in 1933 were only a little over one-half that for 1929. From 1933 to 1947 total levies remained relatively constant then began a steady increase attributed to post-war construction, greater use of excess levies by local taxing units, and legislative programs designed to improve the level and equality of assessments throughout the State.

However, as Shamberger and Thompson noted in The Operation of the Tax Limitation Amendment in West Virginia:[8] "A lasting reduction in the relative level and importance of property taxes was brought about."

The validity of this observation is pointed up by noting that several of the largest programs administered at the state level, such as highway and welfare administration, were largely county functions financed mainly by property tax revenue prior to ratification of the tax limitation amendment. The property tax is now of little, if any, importance in their funding.

The election of Governor H. Guy Kump in 1932 not only found West Virginia in the throes of its worst economic crisis in history, but coincided with the drastic reduction in property tax revenue generated by the tax limitation amendment. Naturally, the first and greatest need was revenue, if only to maintain a minimum of governmental services. This led to certain "emergency" taxes as well as broadened bases and increased rates on existing revenue producers. Not surprisingly, practically all of the "emergency" measures are passively acknowledged as permanent today, with any revision through the years being upward.

Thus, the placing of a constitutional ceiling on property tax rates resulted in the support and administration of numerous functions being shifted from the county level to the state level where they remain today.

Since World War II, legislation affecting the property tax has largely been concerned with equalization between individual assessments and improvement in the relationship of assessments to market values.

In 1947, the Legislature set up a "spot check" program which found the tax commissioner appraising approximately 1% of the property in each county and projecting the value of all nonutility property on this basis. Later, a series of laws

[8] Shamberger and Thompson, The Operation of The Tax Limitation Amendment in West Virginia, p. 18.

required total assessments to be at least 50% of these total appraised valuations. This step resulted in a substantial increase in certain assessments. Inequities between individual assessments were, at the same time, found to be intolerable to a degree not remedied through the existing statute.[9]

This led, in 1958, to the passage of the statute which is now codified as Chapter 18, Article 9A, Section 11 of the West Virginia Code. Under this law, the tax commissioner was to see that all nonutility real and personal property in West Virginia was reappraised by July 1, 1967. There were three products which were to result from this reappraisal:

1. There was to be a property record card for each parcel of real property which described and valued that parcel.

2. Tax maps were to be created for each county showing the location of each individual parcel of real property.

3. Map index cards were to be created for each parcel of real property; these index cards acted as a cross reference point to correlate map and parcel numbers to property record cards and land book entries.

County assessors were to use the resulting State Tax Department appraisal as a guide in making their assessments. By law, the state tax commissioner's total appraised valuation in each of the four classes of property in each county was to represent no more than twice the total assessment in each of the four classes of property made by the county assessor. Whenever the total State Tax Department appraisal in a class of property was greater than double the corresponding assessed value, the county commission was to give an appropriate portion of their levying power to the county school board, so that the school board would not be penalized by the assessor's failure to reach his assessment goal.

The reappraisal program called for by the Legislature was initially accomplished by use of private appraisal and mapping firms. Ninety percent of the cost of appraising and mapping was to be borne by the State Tax Department with the remaining 10% share to be paid by the respective county commissions over a period of three years.

[9] West Virginia Code, Chapter 18, Article 9A, Section 4.

After the initial reappraisal was completed, the tax commissioner's statutory function was described by Code § 18-9A-11 to be as follows:

> "Each year after the completion of the property appraisal in a county the state tax commissioner shall maintain the appraisal by making or causing to be made such surveys, examinations, audits, maps and investigations of the value of the several classes of property in each county which should be listed and taxed under the several classifications, and shall determine the appraised value thereof. On the basis of information so ascertained, the tax commissioner shall annually revise his reports to the Legislature and to the state board (State Board of Education) concerning such appraisals, such reports to be made not later than the first day of January of each year."

In 1969, pursuant to a Governor's Management Task Force recommendation, the State Tax Department's four divisions which dealt with local government finances and revenue measures were consolidated into a single division, the Local Government Relations Division. The four merged divisions were the Assessment Equalization Division which was the division created to monitor the reappraisal of property program, the Assessment and Levies Division, the Public Utility Tax Division, and the Chief Inspector of Public Offices Division.

From the completion of the state-wide reappraisal program in 1968, until 1973, the Local Government Relations Division of the State Tax Department carried on its function by appraising new properties at what those properties would have been worth on the date of the county-wide reappraisal. This program did much to promote the quality of assessment practices by the county assessor but did little to recognize the rapid appreciation of property values.

During the period from 1971 through 1973, management decisions supported by increased appropriations from the Legislature, were made to create real estate reappraisal teams, industrial reappraisal teams, and commercial personal property appraisers. The goal was a systematic county-by-county reappraisal of property to reflect the more recent values.

In the period from 1970 through 1977, the Tax Department also began a systematic mapping of coal property ownership in West Virginia. The culmination of this program was the release of individual parcel-by-parcel appraisals of coal property in 27 of our coal-bearing counties.

The industrial reappraisal effort has been reduced to a 4½ year cycle. The latest cycle was completed in 1976.

A complete review of commercial personal property which was begun in 1978 is scheduled for completion in 1981. This cycle is the first modern reappraisal for commercial personal property, and follows ten years of maintaining the old appraisals completed during the original reappraisal program.

Chapter 11, Article 6 of the West Virginia Code requires the state tax commissioner to tentatively assess all public service (utility) corporations each year. Public utility assessments are created each year from returns filed by the public utility taxpayers; the appraisals made by the public utility appraisal staff of the Tax Department represent the current market value of the utility companies, and are derived primarily by using the income approach to value.

Reference:

Part of this article was published in "A Study of Ad Valorem Property Taxation of Tangible and Intangible Personal Property and Its Application in West Virginia" by West Virginia Research League, Clifford G. Lantz, Executive Director, March 1, 1972. Revisions to the article from 1972 to present were made by John R. Melton, Director, Local Government Relations Division, West Virginia State Tax Department.

PROPERTY TAX ADMINISTRATION IN GENERAL

The property tax has been a major source of revenue since enactment of the State's first tax legislation in 1863.

Two factors determine the amount of taxes a property owner is charged with:

1. the assessed valuation placed on his property
2. the levy rate calculated against the assessed value

Laws governing property taxation are established on a statewide basis by the Legislature pursuant to provisions of the State Constitution. These statutory provisions are contained, for the most part, in Chapters Eleven and Eleven-a of the official Code of West Virginia. Reappraisal legislation is included in Chapter Eighteen. Responsibility for property tax administration is primarily that of elected officials under the general supervision of the state tax commissioner.

West Virginia's constitutional and statutory requirements stipulate that property owners are to pay taxes in proportion to the value of their property. All property is to be assessed annually at its true and actual value.

Property assessments are a source of many local political and fiscal problems. Taxpayers object when assessments are inequitable. Fiscal management is also adversely affected. Large unvoted increases in property taxes caused by the failure to offset increases in assessed values with decreases in tax rates are unpopular. Major shifts in the share of property taxes borne by homeowners, farmers, business, and industry that follow in infrequent reassessments also cause an outcry. Reforming real property assessment practices can help avoid or resolve such controversies.

There are several links between a local government's fiscal health and real property assessments. Assessments based on up-to-date property values can strengthen fiscal health by accomplishing the following goals:

1. maximizing potential property tax revenues
2. increasing borrowing capacity
3. assuring a full share of intergovernmental aid

Property tax rates are flexible and can be easily adjusted to meet changing revenue needs as long as rate ceilings have not been reached. Real property is immobile, and property taxes are difficult to avoid. The property tax captures for the community some of the windfall in increases in property values that are generated by public expenditures for services and capital improvements. These benefits of the property tax are maximized when assessed values are based on current market values.

Under the market value assessment standard, assessors are required to estimate the most likely sales prices of all taxable properties in their jurisdiction. Actual assessments, in turn, are some portion of these estimates, which are called appraisals. The advantage of the market value standard is that property owners and others, using recent sales prices as evidence, can easily judge for themselves whether they are being correctly and fairly treated.

The requirement that taxation be equal and uniform among individual taxpayers if found in the federal and state constitutions as well as being a part of West Virginia law from the time the first legislature met.

The land and personal property books are an inventory of all taxable nonutility property in the county, showing an assessed value for each item. The completed books are the means by which the levying bodies arrive at the amount of tax to be paid by each property owner.

The power to spend lies with the governing bodies of each of the county taxing jurisdictions - county court, school board, city councils - subject to the limitations imposed upon by law.

Each of these levying bodies determines the spending programs necessary to provide the services their constituents need and desire for county services, schools and municipal services.

Each levying body is required to decide upon a levy estimate, secure approval from the state tax commissioner, and hold a public hearing prior to adoption of a final budget which then becomes its official financial program for the fiscal year. Each levying body then reports its approved tax levy rate to the assessor and the total levy rates on assessed valuations are determined and extended.

Any property owner believing his property to be unfairly valued may appeal to the assessor, the county commission, sitting as a board of equalization and review, and the circuit court, in that order. If the property owner thinks his assessed valuation is fair but that taxes are too high, then he can make his view known to the levying bodies at the time of the required public hearing on their proposed budgets.

The collection and distribution of property tax revenue derived from nonutility property is the responsibility of the sheriff.

THE ELECTION OF ASSESSOR

The West Virginia Constitution provides for the election of as many as two assessors for each county of the State. However, the CODE limits the election to one, who will be elected for a four-year term. He will be elected in the general election as is prescribed by law. The qualifications of his office are simple. The candidate must be a resident of the county in which he is elected and must be a registered voter. While holding office, he will be ineligible for a seat in the Legislature. His office will be maintained at the county courthouse and will be open throughout the year.

A candidate for assessor must pay a filing fee equivalent to 1% of the annual salary received for the office to the circuit clerk. At the time of filing, the candidate will file a certificate of announcement.

The assessor's credentials consist of the certificate issued by the county court as a canvassing board. A deputy assessor's credentials consist of the order of the court which authorized his appointment.

The term of office of the assessor will begin on the first day of January following the election. The term will continue unless the office is vacated by death, resignation, removal from office, or otherwise, and until his successor is elected or appointed and has qualified.

Before the assessor actually begins the work which is assigned to him, he must make an oath affirming that he will support the Constitutions of both the United States and the State of West Virginia. In addition, he must affirm that he will discharge his duties to the best of his skill and judgment. The oath may be taken before anyone who is authorized to administer oaths. The required oath will be taken before he enters into his duties. No person who is elected or appointed to an office can perform the duties of the office, nor receive any compensation before taking the oath required by law.

BONDING OF THE ASSESSOR

Within 60 days of his election or appointment, the assessor will give a bond which is approved by the county court of his county. Every bond is conditioned upon the faithful discharge of the duties, and upon the accounting for and the paying over of all moneys which may come into possession by virtue of the office. If any person is late in giving his bond, his office or his position will be deemed vacant.

A person who fills a vacancy until the ensuing general election or for the unexpired term will fulfill the same requirements as those for the official of the regular term. Each official bond will be filed in a book in the office of the clerk of the county court. The county clerk must then send a copy of the bond to the state tax commissioner within two months.

The penalty of the bond will be not less than $2,000 nor more than $5,000.

SELECTION OF DEPUTIES

The assessor may hire deputies, assistants and other employees as they are needed. They must be selected in the same way as are the employees of all other county officers. The deputy assessors must be residents and voters of the county. Their appointment by the assessor will be done with the advice and consent of the county court. These deputies can be removed at the assessor's wish, and he can fill any vacancies.

The law requires that any person appointed to any office will take the same oath as the regularly elected official.

Upon the death of the assessor, the deputy or deputies will perform the assessor's duties until there is a new assessor. Any default or malfeasance on the part of the deputy will constitute a breach of the deceased assessor's bond. However, the personal representative of the deceased assessor has some right to remove or appoint deputies with the consent of the county court or his principal while living.

If anyone is entitled to recover money from any such person or officer by action, the court to which a return is made may give judgment against the officer or his deputies, as the case may be, their sureties, and their personal representatives, for as much principal and interest as would have been recoverable by such action from the time the return should have been made to the present. The interest rate on the returned principal will be at a rate no less than 6% nor more than 15% per annum from the time due until final payment is made, as the court may deem proper.

SALARIES OF THE ASSESSOR

The Constitution provides for the compensation, duties, and responsibilities of the officers, and provides for the appointment of their duties and their assistants by general laws. However, no extra compensation will be granted or allowed to the assessor after his services have been rendered or the contract has been made. The salary of the assessor will not be increased or diminished during his term of office. If the Legislature empowers new duties beyond the scope of the existing duties of the assessor during the term of office, the Legislature may increase the salary during that term of office. In addition, his sureties will not be released from any debt or liability due the State.

To determine the assessor's compensation, the counties are grouped into seven classes based on their assessed valuation of all classes of property. These seven classes and the minimum and maximum valuation of property, all classes, established to determine the classification of each county are as follows:

CLASS	MINIMUM ASSESSED VALUATION OF PROPERTY ALL CLASSES	MAXIMUM ASSESSED VALUATION OF PROPERTY ALL CLASSES
CLASS I	$600,000,000	NO LIMIT
CLASS II	$450,000,000	$599,999,999
CLASS III	$200,000,000	$449,999,999
CLASS IV	$100,000,000	$199,999,999
CLASS V	$ 50,000,000	$ 99,999,999
CLASS VI	$ 15,000,000	$ 49,999,999
CLASS VII	0	$ 14,999,999

The classifications will be certified by the county assessor, state auditor, and the county clerk.

Prior to March 28, 1976, and every second year afterwards, the county commission shall determine if the assessed valuation of all the classes of property of the county, as certified by the county assessor, is within the maximum and minimum limits of the present property classification. The county assessor and state auditor, and county clerk will certify the final assessed valuation of all classes of property to the state tax commissioner, who may then check the property classification of each county, when the levy estimate is filed by the county commission.

The salaries of the assessor, his deputies and employees will be paid from county funds, as determined in the West Virginia Code § 11-2-5. In addition to the salary or compensation provided there, the county commission of each county will pay any additional compensation for additional duties as found in § 11-2-5a of the Code.

The county assessor and his assistants will be paid a monthly or semimonthly salary out of the county treasury by the county commission. Before a draft is drawn in favor of the county official, his assistants or deputies named in the budget, the proper county official must file a detailed monthly or semimonthly statement with the county treasurer and the county clerk.

The assessor and his assistants will sign and submit to the county clerk an affidavit at the end of each fiscal year in the form prescribed in § 7-7-10 of the Code. If the services of the assessor terminate before the end of the fiscal year, the assessor will sign and submit the affidavit to the clerk of the county commission when his services terminate. These affidavits can be found filed in the office of the clerk of the county commission.

The assessor will not receive or be paid directly or indirectly any part of the compensation of any assistant or employee or any fee or reward for appointing him to a position. Any violation of the provisions in this section will be punishable, if convicted, by a fine of not more than $500, imprisonment for not more than one year, or both. The assessor, if he is convicted of this misdemeanor, will forfeit his office.

On June 1 of each year, the assessor will file with the county commission and with the state tax commissioner an itemized sworn statement of the money spent by him including compensation and other items of value for each one of the twelve months preceding. This report will list the services of all his assistants, deputies and employees.

If the assessor fails to file a detailed request for appropriations or the budget statement as provided in § 7-7-7, or fails to file the monthly or semimonthly statement as provided in § 7-7-19 of this article or fails to file the statement of expenditures as provided for in § 7-7-17, or if he fails to follow any of the requirements provided in this section of the Code, he will be guilty of a misdemeanor unless another penalty is prescribed. If convicted of a misdemeanor for these violations, he will be fined not less than $50 nor more than $100, or imprisoned in the county jail for at least 30 days, but not more than six months, or both.

The assessor and his deputies can be reimbursed for any mileage they have logged in the process of determining the taxation value of property at the rate stated in the Code under § 7-7-16. These claims will be supported by a full and accurate account which shall be made monthly and verified.

VACANCY AND REMOVAL FROM OFFICE

The county commission will fill by appointment any vacancy occurring in the office of the assessor until the next general election. At that time the vacancy will be filled by an election for the remainder of the term.

The assessor may be removed from office for official misconduct, incompetence, neglect of duty, or gross immorality. Unless removed, he shall continue to discharge duties until successors are elected or appointed. Upon conviction, his office will be declared vacant.

No person convicted of treason, felony, or bribery in any election shall, while a conviction remains unreversed, be elected or appointed to any office, and if any person, while holding such office is so convicted, the office will be vacated.

DUTIES ASSESSOR MUST PERFORM TO QUALIFY FOR SUPPLEMENTAL COMPENSATION

West Virginia State Legislature House Bill No. 833, West Virginia Code § 11-2-5a, effective July 1, 1971, provides for the following additional duties of the assessor.

1. TRANSFERS:

   The assessor shall transfer to real estate cards and map cards the new owner's name, deed book, page and sales price.

2. SPLITS:

   The assessor shall make new appraisal cards and map cards with the owner's name and description and place in mapper's file.

3. CHANGE CARD:

   The assessor shall place in a designated file the original appraisal card with change card attached indicating problem together with remarks to assist the appraiser in making change.

4. PUBLIC UTILITY PROPERTY:

   The assessor shall assist the tax commissioner in determining if property owned by public utility companies is operating or nonoperating property.

5. CLASS CHANGE:

   The assessor shall note any class change card and attach to appraisal card and place in file for appraiser.

6. SALES RATIO ANALYSIS:

   The assessor shall annually prepare a sales ratio analysis comparing sales prices with assessed and appraised values. The form or manner of such analysis shall be developed by the tax commissioner and provided each assessor by September 1 of each year.

ASSESSMENT
PROCEDURES

PROCEDURES

1. The assessor must assign the work of assessing equally among himself and his deputies according to taxing districts, or as they see fit.

2. The assessor must, with his deputies, revise the lists of property taken by them to guarantee the equality and uniformity of assessments throughout the county.

3. The assessor must list and value all taxable property which has been omitted from the taxpayer's list. It is his duty to correct property lists so as to give property its true value.

4. Between July 1 and January 20 the assessor and his deputies must meet at least twice. The purpose being to secure a uniform property valuation throughout the county according to its true and actual value. The last meeting will take place after listing of property, and during it the completed list will be reviewed and if found to be in error, corrected.

5. The official books and papers of the assessor will be the permanent records of his office and shall be turned over to his successor. In case they are lost or destroyed, new copies will be obtained at the expense of the county treasury.

6. All Acts of the Legislature, codes, forms, reports, blanks, books, dockets, and other property of whatever kind furnished to any officer by authority of law are the property of the office and must be delivered by the retiring officer to his successor within ten (10) days after the latter has entered upon the duties of his office.

TIME AND BASIS OF ASSESSMENTS

All property, both real and personal, having a tax situs in West Virginia on July first of each year, is to be assessed at its true and actual value. Code § 11-3-1 defines true and actual as

> ". . . the price for which the property would sell if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale, except that the true and actual value of all property owned, used and occupied by the owner thereof, exclusively for residential purposes and upon farms occupied and cultivated by their owners or bona fide tenants shall be arrived at by giving primary, but not exclusive, consideration to the fair and reasonable amount of income which the same might be expected to earn, under normal conditions in the locality wherein situated, if rented. . . ."

The taxes on all property are the legal reponsibility of the person who owns the property on July 1, whether it is assessed to the owner or someone else.

If at any time after the beginning of the assessment year the tax commissioner ascertains that any assessor or deputy is not complying with the provisions of Code § 11-3-1, the tax commissioner may order and direct a reassessment of any or all property in a taxing district. The tax commissioner has the authority to appoint one or more special assessors to make such assessments, and any such special assessors has the same power and authority now vested by law in assessors. The work of special assessors shall be accepted and treated for all purposes by the county boards of review and equalization and the levying bodies, subject to any revisions of value in appeal, as the lawful assessment of that year.

The tax commissioner, with approval of the board of public works fixes the compensation for special assessors and they are paid with county funds.

ASSESSMENT, BUDGETING, LEVYING AND TAX COLLECTION CALENDAR

The purpose of this section is to give the assessor a schedule of time and events pertaining to his duties; and in the completion of the assessment of his particular county. Your attention is also directed to the West Virginia Code on each of the various steps in regards to your work.

July

1 Assessor begins to ascertain individuals in the county eligible for the homestead exemption. [§ 11-4-21]

1 Assessment date at true and actual value. [§ 11-3-1]

1 Assessor and deputies begin canvass of the county to list real and personal property. [§ 11-3-2]

1 Assessor issues assessment blanks to corporations and companies. [§ 11-3-2]

1 Assessor is required to have two meetings with his/her deputies between July 1st and January 20th for the purpose of securing uniform valuation of real and personal property throughout the county. [§ 11-2-7]

1 Last date for assessor to submit copies of personal property books, with levies extended, to county clerk; and land book, with levies extended, to state auditor. [§ 11-3-19]

1 Last date for county clerk to certify copy of delinquent list to state auditor. [§ 11A-2-14]

1 Lien attaches upon real property for taxes payable for the ensuing fiscal year. [§ 11A-1-2]

15 Sheriff may commence collections of first half taxes. [§ 11A-1-6]

August

1 Last date for state tax commissioner to notify assessor of any pollution control facility operating in his county on the preceding July 1st assessment date together with salvage value of each facility. [§§ 11-6A-1, 11-6A-2, 11-6A-3 and 11-6A-4]

15-31 State auditor notifies sheriff of delinquent lands to be added to next September delinquent list. [§ 11A-3-14]

September

1 Last date for 2½% discount on first installment taxes. [§ 11-6-18, § 11A-1-3]

10 Last date for sheriff to compile list of delinquent land as of September 1st in preparation for publication. [§ 11A-3-2]

15 Last date for state tax commissioner to notify public utilities of tentative assessments for current year and deliver same to board of public works. [§ 11-6-9]

October

1 Board of public works to determine assessed valuation of public utility property no later than October 1st. [§ 11-6-11]

1 First half taxes become delinquent after this date. [§ 11A-1-3]

1 Last date for qualified individual to register with the assessor his right for the homestead exemption. [§ 11-4-21]

15 Sheriff's sale of delinquent land any Monday between October 15th - November 22nd inclusive. [§ 11A-3-4]

November

1 Last date for incorporated, unincorporated and individual businesses to file returns. [§§ 11-3-12, 11-3-15]

15 Last date for sheriff to remit to state treasury all taxes collected for the state prior to November 1st. [§ 11A-1-14]

December

1 Assessor begins to compile land and personal property books no later than December 1st.

31 Lien attached upon all property and assets of public service corporations for taxes payable for current assessment year. [§ 11-6-23]

January

15 Notify property owners when the assessed valuation of any item of real property is to be increased more than ten percent (10%) over the assessed valuation on the property for the previous tax year. [§ 11-3-2a]

30 Last date for assessor to complete land and personal property books. [§ 11-3-2]

February

1 Last date for assessor to submit official copy of land and personal property books to board of review and equalization. [§ 11-3-19]

1 County commission shall sit, not later than first day of February, as board of review and equalization. [§ 11-3-24]

15 The county commission sitting as a board of equalization and review must not adjourn *sine die* before this date. [§ 11-3-24]

February

28 Last date for state tax commissioner to instruct assessor on certified questions of classification and/or taxability of property. [§ 11-3-24a]

28 Last date for board of review and equalization to complete review of assessments and certify land and personal property books as completed for the year. [§ 11-3-24]

March

1 Last date for county officers to file statement of probable amounts required for employees for next fiscal year with the county commission. [§ 7-7-7]

1 Last date for 2½% discount on second installment taxes. [§ 11-6-18, § 11A-1-3]

7 Last date for assessor to furnish to all levying bodies a certified statement of aggregate totals of real and personal property and for county clerk to certify similar statement of public utility assessments. [§ 11-3-6]

7-28 Each local levying body holds meeting(s) to compile levy estimate statement. [§ 11-8-9] Upon completion, two certified copies are forwarded to the state tax commissioner and the clerk shall publish the statement forthwith. The session shall adjourn until the third Tuesday in April. [§§ 11-8-10, 11-8-12 and 11-8-14]

April

1 Second installment taxes become delinquent. [§ 11A-1-3]

1 Sheriff may publish first notice of delinquent taxes of previous year. [§ 11A-2-10a]

15 Final date for board of public works to levy for state purposes. [§ 11-8-8]

15 Last date for sheriff to remit to state treasury all taxes collected for the state prior to April 1st. [§ 11A-1-14]

Third Tuesday

Levying bodies reconvene to hear and consider any objections made to the estimate and proposed levy. After the state tax commissioner gives written approval of the estimate, estimate and levy is to be entered in property record book. [§§ 11-8-10a, 11-8-12, 11-8-14a] Levy rates are then certified to assessor by state tax commissioner.

May

1 Last date for filing of public utility returns with state tax commissioner. [§ 11-6-1]

1 Last date for sheriff to prepare list of previous years taxes remaining delinquent as of April 30th. [§ 11A-2-11]

June

1 Assessor must complete registration of all deaf and blind persons under age 21 no later than June 1st and forward the report to the state superintendent of schools and the superintendent of the state school for the deaf and blind no later than July 1st. [§ 18-17-6]

7 Last date for assessor to submit land and personal property books, with levies extended, to sheriff. [§ 11-3-19]

15 Final date for sheriff to present delinquent tax list to county commission. [§ 11A-2-14]

STANDARDIZED DEFINITIONS

The following are standardized definitions for those terms commonly used to identify or properly classify transactions relating to the collection and/or adjustment of property taxes.

BACKTAX — A procedure by which property omitted from prior years' property tax books is entered on the current property book. Although there is no statutory limit for backtaxing real or personal property, real property omitted for five consecutive years is forfeited to the State. The backtax should be calculated based on the levy rate for the years omitted and a 6% per year interest calculated on the years omitted. (On the 1979 books, 12% interest would apply to a 1977 backtax.) These figures should be included with the current charges. The entire amount will be subject to discount and 9% interest, if applicable. The sheriff should not collect current taxes until delinquent taxes are paid.
(See generally, Code § 11-3-5, § 11A-1-7)

The Countytax Computer System maintains levy rates of the four preceding tax years only. Where a backtax is applied beyond four years, the rates and calculations must be done manually.

ERRONEOUS ASSESSMENT — An error in the value, description or ownership of property listed on a property book.

CORRECTIVE (THIS APPLIES ONLY TO THOSE COUNTIES ON THE COUNTYTAX COMPUTER SYSTEM OR SIMILAR MECHANIZED TAX ASSESSMENT AND COLLECTION SYSTEM)

A tax receipt (ticket) which is created to remedy an erroneous assessment or an omission from the tax books during a county's first year of tax collection after conversion to the computer system. A corrective is subject to discount and interest and can be collected in halves.

These tickets were designed to correct errors caused by transcription or keying which may occur during conversion (ex - mass duplicates, erroneous assessments). NO CORRECTIVE TICKETS MAY BE CREATED AFTER THE FIRST ACCOUNTS RECEIVABLE PROCESSING YEAR. (First year following conversion.)

EXONERATION The process by which a taxpayer is released, by the county commission, of all or part of the current tax liability as listed in the property tax books.

IMPROPER A tax receipt (ticket) reflecting incorrect information that resulted from a clerical or keying mistake.

SUPPLEMENTAL (PERSONAL PROPERTY ONLY)

A tax receipt (ticket) which is created for a taxpayer who was not assessed on the property books. It is to be paid in full at the time created and created for the amount paid. Interest can be figured in this amount, but it will not be reported separately on your control reports. (This is applicable only to those counties on the Countytax Computer Systems.) NO discount is to be given since a supplemental is technically the advanced collection of a prior year tax. The supplemental process is for personal property only to allow a person to get his vehicle license.

CLASSES OF PROPERTY

The Tax Limitation Amendment of 1933 defines the four classes of property in West Virginia and provides for the maximum levy rate that is to be charged on each class.

For the purpose of levies, Code § 11-8-5 classifies property as follows:

Class I - All tangible personal property employed exclusively in agriculture, including horticulture and grazing;
All products of agriculture (including livestock) while owned by the producer;
All notes, bonds, bills and accounts receivable, stocks and any other intangible personal property;

Class II - All property owned, used and occupied by the owner exclusively for residential purposes;
All farms, including land used for horticulture and grazing, occupied and cultivated by their owners or bona fide tenants;

Class III - All real and personal property situated outside of municipalities, exclusive of Classes I and II;

Class IV - All real and personal property situated inside of municipalities, exclusive of Classes I and II.

COMPLETING AND EXTENDING LEVIES ON PROPERTY BOOKS

It is the assessor's duty to add the columns of figures on each page of the land and personal property books and to show at the bottom of each page the aggregate of each of the columns. Then at the end of each district list, he will enter the aggregate of the district, and note the pages from which he transferred the district aggregate. These lists will show the total of the district from where they were obtained. The totals from each of the districts are first transferred to the end of the book, and are to be added so they will show the total of each column for the whole county, showing all the property references.

The assessor and his deputies are required to make the same valuation and the same oath of their property as all other persons. The assessor will personally assess the property of the deputies, and they will assess his. In all cases, the assessments of these men will be as if they were ordinary citizens.

If because of war or other forcible resistance an assessment cannot be made in the usual way, the assessor shall either use the former land or personal property books, or, upon the best information he can obtain, proceed to make the assessment. In case there is no assessor or for any reason there is no real or personal property book made out in any year, taxes shall be extended and collected as if the assessments had been made as usual, or as if the land and property books had been completed.

The land and personal property books of the assessor will be completed in time so that they may be submitted to the board of equalization and review no later than February 1 of that assessment year. As soon as possible after the levy is made, the levy will be extended on the land and personal property books. One of the copies of the land books will be delivered to the sheriff no later than June 7, and one copy of the personal property books at the same time. One copy of each of the books will also be delivered to the county clerk no later than July 1, and one copy of the land books shall be delivered to the state auditor no later than July 1. These will be the official copies of those books once they have been delivered. The assessor may require that a written receipt for each book be given to him for the delivered copies.

Before delivering any of these copies, the assessor will make and subscribe to an oath at the end of them, certifying that they are, to the best of his knowledge, complete and correct. This oath can be found in § 11-3-19 of the Code.

If any assessor knowingly makes a false entry, addition or recapitulation of the personal or land property books, or in any of the copies of those books, he will be charged $300 for each offense.

Any postage and express charges which may be incurred by the assessor in the performance of his official duties must be paid by the county commission.

After the copies of the land or personal property books have been verified and delivered, there will be no change made that would affect the taxes of that year unless they are changed on the order of the court on appeal from the assessment.

The county commission shall review all assessments made by the assessor. When the court reviews the work of the assessor, it sits as the board of equalization and review, and must meet annually no later than the first day of February for the purpose of reviewing and equalizing the assessment made by the assessor. At its first meeting the assessor shall submit the property books for the current year in their completed form, except that their levies shall not be extended.

The assessor and his assistants shall attend and render every possible assistance in connection with the value of property assessed by them. The court will examine the property books, and will add to them the names of the persons who were omitted on the lists, as well as the property description and value, whether it is personal or real. The court will correct any errors in the books, and do whatever else is necessary to make the valuation comply with the provisions in Chapter 11 of the Code. In no case will any question of classification or taxability be considered or reviewed. After the county commission has completed the review and an equalization of the property books, they will be returned to the assessor and the levies will be extended as provided by law.

MAXIMUM RATES OF LEVY

Levy rates must be in ratio of 1-2-4. The maximum rates on each one-hundred dollars assessed values are Class I - 50¢, Class II - $1.00, Class III - $1.50 and Class IV - $2.00. The following table lists the levying bodies and the maximum rates that may be applied for each class.

MAXIMUM PROPERTY TAX RATES

(In cents per $100 assessed valuation)

LEVYING BODY	CLASS I	CLASS II	CLASS III	CLASS IV
STATE	.25	.50	1.00	1.00
COUNTY	14.30	28.60	57.20	57.20
SCHOOL	22.95	45.90	91.80	91.80
MUNICIPAL	12.50	25.00	-	50.00
TOTALS	50.00	100.00	150.00	200.00

Code § 11-8-16 permits a local levying body to increase the levies by a special, or excess, levy election. County commissions and municipal councils may increase the levies by fifty percent for three years, and boards of education may increase their levies one-hundred percent for five years. The levying body must submit the question of the additional levy to the voters of the taxing district. The proposal must list the purposes of the levy, the amount for each purpose, separate and aggregate assessed value totals of each class of property, the proposed levy rate, the number of years the levy will be imposed, and the fact that the levying body will or will not issue bonds upon approval of the special, or excess, levy. At least sixty percent of those voting must cast their ballots in favor of the additional levy before the levy may be imposed.

Code § 13-1-1 empowers local levying bodies to issue and sell general obligation bonds. Section 3 of the same chapter and article sets forth the amount of indebtedness for which the bonds may be issued, and section 20 provides for the imposition and collection of taxes to pay the principal and interest that is due each year.

Code § 11-8-6b provides for county commissions to impose a sufficient portion of the maximum authorized levy rates to pay the principal and interest required for bonded indebtedness. Municipalities are given the same authority under the provisions of Code § 11-8-6d. Article 10, Section 10 of the Constitution of West Virginia, known as "The Better Schools Amendment" and Code § 11-8-6c requires county boards of education to lay a levy separate and apart and in addition to the maximum authorized rates.

Between March 7-28 each levying body is required to submit a levy estimate to the state tax commissioner for approval. After the levy has been approved the levying body receives a certificate of approval which allows them to lay the levy no later than the third Tuesday in April. Within three days a certified copy of the order laying the levy is forwarded to the state tax commissioner and the state auditor. The tax commissioner also receives two copies of the rate sheet which lists the levy rates laid by the levying body. One copy of the rate sheet, validated by the state tax commissioner, is then forwarded to the county assessor and the rates listed and validated are those used for extending the levies.

Under no circumstances may an assessor extend taxes for a levying body without the approval of the state tax commissioner.

ASSESSMENT
REAL PROPERTY

THE ASSESSING PROCESS

Essentially, the assessing/appraisal of real estate falls within the field of economics, embracing its principle rules and laws as they affect free private enterprise. An assessor, his deputy or the state appraiser must apply these laws and rules in a most practical manner. The principle data and procedures involved in the assessment process are as listed below. It is the function of the assessor/appraiser to provide much of the data and solve the appraisal problem. As we are aware the subject is wide and the problems may be numerous and quite varied.

IDENTIFICATION OF THE PROPERTY

The assessor must know the exact location of the property that he/she is to assess - not only the street address but also the legal description of the property which describes its location in relation to recorded maps on file in the county map room or similar official records. The dimensions of the tract of land should be verified from the official record or survey plat. If there is any question as to location, area involved, or boundaries, it is highly desirable for the assessor to secure a survey plat or tax map, for he is not ordinarily prepared nor expected to do the work of a mapper or surveyor. Perhaps the owner will have an official survey of the tract, which will save considerable time.

PURPOSE OF THE ASSESSMENT

It is essential that the assessor and the deputy assessor know the intended purpose of the assessment so that he may be ready to support his values to the taxpayer in the assessors office or if the taxpayer intends to seek relief at the board of equalization hearings in February. For all practical purposes the assessors assessments will be for tax purposes only.

THE TYPE OF VALUE OR PRICE REQUIRED AND DATE OF THE ASSESSMENT

The valuation sought may be the market value, the depreciated replacement cost, the productive value, the estimated sales price, the value of the leased fee, the value of the leasehold, and so on. The assessor in determining what the value should be must know if the assessment is to be the current values or value of some past date. As a general rule, it will be for July 1 of each year.

PHYSICAL, SOCIAL AND ECONOMIC DATA AS TO LOCATION

If the assessor is not familiar with a part of his county such as a city or area in which the property is being assessed, it will be necessary to provide a brief description of the major factors of the city or area. Ordinarily it is not wise to go into a lengthy discussion - a brief description is adequate. The description of the neighborhood is basic to the assessment and should include the important physical, social and economic data involved. It should be appropriately described as to basic population characteristics, special hazards, nuisances, natural physical features and landscaping, kind and condition of neighborhood buildings, sufficiency of public utilities, street surfacing, transportation and economic conditions as appropriate.

The typical income range of the neighborhood is a very basic element not only for residential assessments, but also for retail properties. Of course, the price range of residences in the neighborhood is usually quite closely related to the income range of the occupants. Consideration must also be given to the stage of development of the neighborhood, the likelihood of new construction and the amount of owner occupancy and of vacant properties. Consideration must be given to amenities for residential properties and to income data for commercial properties. Land use zoning and restrictive covenants as to land use should be considered. It is quite important to know this information; obviously, the value of the property will be highly influenced by it.

DESCRIPTION OF THE NEIGHBORHOOD/SITE

The property owner may have a survey plat with full information as to the dimensions and area of the site. It is always good to inquire as to the availability of a survey plat as it may be the most available source of information as to the exact position and dimensions of the land and buildings. Use any plat you may obtain to compare to the tax maps in your office. The tax map and survey plat can be checked to see that it is the same legal description as the property being assessed. If the owner has a copy of his deed to the property, it may be helpful in this respect. Buildings may have been added after the survey. The assessor must inspect the site and describe the topographical features, drainage conditions and so on. He must observe and report all pertinent information of the property and the streets and utilities which serve the property.

RESIDENTIAL, COMMERCIAL AND INDUSTRIAL ASSESSMENT HIGHEST AND BEST USE

The * "highest and best use" of the site/neighborhood is one of the most important factors in an assessment. This is that use which, at the time of appraisal, is most likely to produce the greatest net return to land and/or buildings over a given period of time. It is the most profitable likely use to which a property can be put. This estimate is of tremendous importance, not only to the value of the property but also to the amount of time involved to assess it properly. Unless the assessor starts with the correct assumption as to the highest and best use, the complete assessment will be out of focus and incorrect. As a general rule, the highest and best use for the land will be obvious; when it is not, it will be necessary to investigate the situation more thoroughly. The assessor may assume certain best uses, estimate the annual net income available for each such use, and then capitalize the net income from the property, using the land residual technique to find which use gives the highest return to the land. The computations may become quite time-consuming, especially when the land is of a high value.

* This does not apply to farmland.

DESCRIPTION OF THE IMPROVEMENTS

The physical inspection of the improvements (buildings, houses, etc.) is the most basic task of the assessor. The exterior dimensions must be measured as changes may have been made since you were there last. As the measurements of the outside are being taken, the foundation should be checked very thoroughly for cracks or evidence of settlement or shifting.

Information should be secured from the owner or other as to the actual age of the property. If the age is unknown, it will be necessary to estimate it. In the case of large properties, it may be necessary to make several trips to the property in order to make a thorough inspection. Even in the inspection of a small house a second inspection may reveal items that were not observed on the first. You can draw a neat floor plan of the building and a list of the building materials used. Adequacy of the electrical outlets and fixtures should be noted. All mechanical equipment should be listed on the assessor's card. The drawings will ordinarily indicate items of functional obsolescence that were not observed during the inspection of the property. Economic obsolescence, which is the result of influences outside of the property itself, should be observed during the inspection of the neighborhood.

ASSESSMENT OF FIXTURES AS REAL PROPERTY

The West Virginia Code § 11-3-7 provides that in the assessing of buildings or structures, the assessor shall ascertain the value of all machinery and the fixtures attached thereto, and include the same in the value of the building charged to the owner, unless it appears that such machinery and fixtures are owned by some person other than the owner of the building, in which case the value of such machinery and fixtures shall be assessed to their owner as personal property.

The tax commissioner's appraisal of industrial properties are separated into "Land and Buildings" and "Machinery and Equipment"; this would not automatically result in the machinery and equipment being entered in the personal property book. Instead, the assessor should follow the rule in Code § 11-3-7.

PRELIMINARY ESTIMATES OF VALUE

Cost Approach

Land Value: Residential - Commercial - Industrial

It is difficult to discuss land value without mentioning the highest and best use. The estimation of the highest and best use of land is one of the most important items in the assessment of commercial or industrial land, and particularly of potentially commercial land. If, in estimating the best use, it is necessary to use the land residual process, a good start has been made toward the estimation of the land value. If available, sales and asking prices of comparable land should be secured and compared to the subject land to estimate the comparative market value. Asking prices as well as sales prices must be analyzed as to their indication of value. In the older residential neighborhoods, where, land sales are nonexistent, the best alternative is to estimate the land value by selecting several typical properties that have sold recently, and then deducting the depreciated value of the improvements to find the indicated value of the typical site. In some areas, the land may vary 15 percent to 20 percent of the total sales price for modest homes, depending on the locality involved. In a neighborhood where there are sufficient vacant sites that have been sold recently, the market value should be based on the typical sales prices.

REPLACEMENT COST OF IMPROVEMENTS

An accurate estimate must be made of the replacement cost of the improvements. The assessor or his deputy should be qualified by experience or training to estimate the costs. The cost estimate may be made by the quantity survey method (an estimate of the cost of each item of material, labor, and so on), by the unit in place method (the cost of a square foot area of each component plus lump sum estimates for other items), or it may be based upon the square foot or cubic foot area of the gross floor area of the structure, plus lump sum estimates for other items not considered in the basic price; or a combination of these methods may be used. In any event, the estimate must include all of the cost involved in placing the structure and other improvements in place on the ground and to market the property. This of course includes overhead, profit, and any other actual costs required.

Any depreciation involved in the improvements must be estimated. Depreciation is divided into three categories: physical deterioration, functional obsolescence, and economic obsolescence. Of course, physical deterioration is self-explanatory. The dollar amount of accrued physical deterioration may be estimated by computing the cost to cure the unobservable items that are worn, plus 1½ - 2 percent of age of the cost of the unobservable items of construction.

The dollar amount of functional obsolescence is estimated either on the basis of cost to cure or by capitalizing the loss in net income if incurable. You may also estimate the loss of value by market comparison. Functional obsolescence involves a reduction in the optimum utility or appearance and is the result of a deficiency in the property itself; it may be stated as the loss in value due to inherent features of the improvements themselves, such as appearance, antiquated design, over and under improvements, excessively small or large rooms or high or low ceilings, super-adequacy of equipment, or unusual design offering market reaction, and so on. Economic obsolescence is not concerned with the physical features or utility of the property but with the influences from outside the property itself. Such effects generally affect all similar properties in the neighborhood. Frequently this is due to a change in neighborhood occupancy, changing business condition, or a decline in employment opportunities. Sometimes, it is due to a neighborhood nuisance such as an odor or sound. Normally, economic obsolescence is not curable. It may be estimated by market comparison or by the capitalized value of the net income loss.

Summation of Replacement Cost: The summation of the cost is the sum of the estimated cost of the improvement (less depreciation) and the value of the land.

THE INCOME APPROACH

In this approach the income is the yardstick of value. The potential future net rental income of the real estate (not the business) is the value normally measured. Capitalization is the procedure used to estimate the productive value by this approach, and it involves the conversion of the future anticipated net income into present productive value. If the property has a long-term lease by a financially responsible individual or organization, the future net income stream based on the lease should be discounted into present worth by use of annuity tables. If the property is not leased, it is necessary to estimate what the future income will be. This should be based on the income rates of comparable properties. If however, the property is rented for all it is worth, it should be valued on that basis. Basic to the problem of estimating the future income from the property is the determination of the highest and best use. This is basic to all of the procedures used in the appraisal of real estate. If there is any question as to the highest and best use it must be resolved.

It is customary to use the gross monthly rent multiple method to estimate the value of one and two family dwellings by the income approach. The gross monthly rent multiple is found by dividing the gross sales price by the gross monthly rental rate, thus finding the individual gross monthly multiple. The multiple to be used to estimate the value of such properties is the typical rent multiple in the neighborhood. Occasionally, the rent multiple process is used for a quick estimate for other income properties. The gross annual multiple is normally used for other income properties, and it is computed by dividing the gross sales price by the gross annual income.

MARKET APPROACH

This is frequently the most important approach to be used, since it is the most direct method to estimate market value.

The law of substitution is basic to this approach. No property is worth more than it cost to substitute an acceptable property. This is based on the desire and need of the typical purchaser or investor and not as to one particular purchaser or one particular owner. The principle of substitution applies to both the cost approach and to the market approach. The law of diminishing returns is involved when the land is improperly improved; that is, when the structure is too large, too expensive, over equipped or vice versa, or just an improper improvement. It is generally understood that a house which is much larger than those in the neighborhood will usually sell for less than the cost of reproduction. This also applies to superadequacies of equipment.

The market approach is concerned with the comparison of the assessed property with acceptable substitute properties, and with the reaction of the typical purchasers interested in the neighborhood. In the comparison process it is necessary to consider sales that have occurred as recently as possible. Generally, three or four sales are considered sufficient for the average residence and four or five for commercial properties, but you may use more when appropriate and available.

Ideally, only sales will be considered which have occurred within the last 12 months. Of course, if none have occurred in the immediate neighborhood during that time, it is necessary to go into the general neighborhood or similar neighborhoods to find those that have sold within the required time. Sometimes the market may be such that older sales are used, but it is not as desirable. The type of property involved makes a great difference. Some types of commercial and industrial properties sell so seldom it is necessary to consider sales as much as five years old. The relative desirability of the property should be compared on a standard blank form for the property, in terms of percent or dollars, using plus or minus adjustment. Commercial structures sometimes are compared on the basis of factors contributing to the income from the property, where residential properties are usually compared on the basis of the amenities offered. After inquiring into the sales that have been made in the neighborhood over the appropriate period of time and checking as to asking prices of properties for sale and as to probable new construction, the assessor is in a position to consider the supply and demand in the neighborhood.

The assessor should have a good file of sales and other related data on properties in the neighborhood of his operation. The Multiple Listing Service of the local Board of Realtors is a good source for residential and some income type properties. If the M.L.S. has a commercial service, it should be quite helpful. Newspaper clippings provide a good source for data concerning income and market properties.

The comparable market data should be listed on a sheet of paper or card file and filed carefully for future use. The better the assessor's files as to sales data, the better he is prepared to complete the market estimate.

It is very important to know the trend in the neighborhood and general area. The assessor should know, of course, if the prices are increasing or decreasing and other information that may indicate a trend affecting the value of properties in the county. For instance, is the available supply of similar properties increasing or decreasing?? Based on the supply and demand situation, what appears to be the outlook for similar properties?? After completing the procedures suggested above, the assessor should be in a position to complete the estimate of market value.

CORRELATION

After the values have been estimated by the approaches used, it is necessary to reconcile the differences, if any, insofar as practical. First it is necessary to review the approaches used as a check for possible errors. A review may indicate errors or misconceptions. Make the necessary corrections or adjustments to the approach. It is necessary to review the approach quite thoroughly after making adjustments, since a new error may be made unless all related items are adjusted. In reconciling the approaches, use a standard of comparison, such as the indicated value per square foot, and so forth. By using the three approaches, the assessor is, more or less, sighting at the target for the proper value. Generally, the closer the estimates are to each other, the more accurate the assessor has been in the approaches. If there is too wide a spread between the high and low values indicated, they should be reviewed closely. Normally, the cost approach sets the higher limit of value and the income approach the lower limit of value.

FINAL OPINION OF VALUE

The final opinion of value should be the final conclusion reached as the result of the correlation. It is not mandatory that the final estimate be exactly the same as one of the approaches used, but it should be within an acceptable bracket.

BUILDING OR REAL PROPERTY IMPROVEMENT NOTICE

Any person, corporation, or association, or owner of real property who is subject to property tax, and shall erect any building or structure in a manner which will increase the value of the property by $1,000 must give notice in writing to the assessor within 60 days after the improvement of the property is begun. The notice must be stated on forms as may be required by the tax commissioner, who shall furnish the assessor with such forms.

The notice shall contain a statement that improvements are being made, or have been made, location and address of the property, and the names of the property owners. The information must be of an advisory nature, and may be used by the assessor in performing his duties. However, a report made on behalf of a mine, mill, factory, or other industrial establishment, and filed with the assessor on or before June 15, which discloses any improvements made during the previous 12 months shall be deemed in compliance with this section. Also, the area within any county or municipality where a building permit has been obtained by the owner or the issuing authority shall be sufficient notice under this section if the delivery of a copy to the assessor has been made.

Any person who shall violate these provisions is guilty of a misdemeanor and, if convicted, shall be fined between $10 and $100. [§ 11-3-3a]

The assessor should notify building contractors and building supply companies of the existence of this statutory requirement, and should supply a quantity of reporting forms to each of these entities to use or distribute to their customers.

ASSESSMENT OF LANDS LYING IN MORE THAN ONE COUNTY

Every tract of land of one thousand (1,000) acres or less, lying in more than one county, may be entered for taxation on the land book of the county where the greater part of value lies, but the entry and payment of taxes, in any county where any part is situated, shall, for the time during which the same is entered and paid, be a discharge of the whole of the taxes and levies charged and chargeable thereon.

Every tract of land of more than one thousand (1,000) acres, lying in two or more counties, shall, for the purpose of taxation, be entered and charged with all taxes in each tax district of the several counties in which any part of it is, to the extent, as near as may be, that the same lies in such district.

When any such tract of more than one thousand (1,000) acres is assessed, part in one county and part in another, the several officers of such counties whose duty it is to make out the land books of the respective counties shall value the part lying in his county without regard to the value of the whole tract, and he shall ascertain its value. [§ 11-4-14]

ASSESSMENT
PERSONAL PROPERTY

THE ASSESSMENT OF PERSONAL PROPERTY

All personal property belonging to persons residing in this State, whether such property is located in or out of the State, and all personal property in the State, owned by persons residing out of the State, shall be entered in the personal property book and be subject to taxation, unless exempted by law.

However, personal property of any class belonging to residents of this State, which is permanently located in another state, and is taxed in such other state, shall not be taxed in this State.

The shares of capital stock owned by residents of this State in corporations located in other states, whose property is taxed by such other states, is not required to be listed for taxation.

Any person who, at any time before the assessment year, transfers by loan, deposit or gift, any notes, bonds, bills and accounts receivable, stocks or other intangible personal property, which are subject to taxation, and who does not return such property for taxation as of the assessment date, if done with the intent of evading taxation, shall be assessed with such property for taxation. [§§ 11-5-1, 11-5-3]

PERSONAL PROPERTY DEFINED

The line of demarcation between real estate and personal property is not too distinct. In general, real estate consists of immoveables and personal property of moveables. This distinction is clearly a relative matter, for many buildings and other improvements to land are moveable and much personal property is difficult to move.

Webster's Third New International Dictionary defines personal property as estate or property other than real property consisting in general of things temporary or moveable, including intangible property.

Real estate is defined as land and permanently affixed buildings, or other structures, together with its improvements and natural assets, such as minerals, and with the inclusion of corporeal rights, or incorporeal rights, that follow the ownership of the land and with the interest in such rights.

The Columbia Encyclopedia notes that the terminology and much of the content of modern property law stems from its origins in feudalism. The fundamental division is into real estate, or real property and personalty, or personal property.

Real estate is chiefly land and improvements built thereon. Sometimes it is comprehensively, but loosely, described as lands, tenements, and hereditaments. Formerly, its chief characteristics in a legal sense, were that it went by descent to the heir of the owner and that ownership might be recovered by a lawsuit (a so-called real action). Also possessing these characteristics, and hence classified as real property, were titles of honor, heirlooms, and the right to sell and ecclesiastical benefice.

The manner in which realty is owned is said to be an estate specifically, ownership is a fee of some sort, e.g., an estate in fee simple.

Personal property is chiefly moveables, namely, portable objects. Typically, but by no means invariably, the owner could by will, gift, or sale determine its distributions (note the contrast with the term "descent" above) and if it was wrongly taken by lawsuit, a so-called personal action would give damages only, but would not restore the object. Certain types of interest in land with these characteristics were also deemed personalty. Examples are leases for a period of years, mortgages, and liens.

The distinction of realty and personalty served the purposes of early feudal society. Land, the basis of most wealth and the keystone of the social structure, was controlled in many ways to protect society, while the ownership of personalty, being of minor importance, was virtually unfettered.

As the economic system was altered during the Renaissance and trade expanded, personalty lost its subordinate position and grew to be the economic mainstay of a large class of the citizenry. Personalty could be bought and sold with relative freedom without the hindrances that beset the disposal of land. Consequently, lawyers then tried to evade the hindrances and the irksome restraints placed on realty.

Gradually the law of realty tended in all important respects to be assimilated to that of personalty. In time, land was sold with almost perfect freedom and distributed by will. Fundamentally, it joined the list of other commodities.

Differences of detail in the law of realty and personalty still persist, especially in the transfer of realty, which is attended with great formality. There are also many distinctions of detail, and some of substance, in the property laws of the American states.

Personal property is classified into two main categories, tangible and intangible. Tangible personal property includes a great variety of items: merchant's and manufacturer's inventory, furniture and fixtures, machinery and equipment, tools, rolling stock of railroads, farm machinery, harvested crops, logs, household furniture, clothing, jewelry, and "other personal effects", to name a few.

The second category of personal property is intangible property. This class consists mainly of contractural rights that have been acquired by individuals or businesses in the tangible property, and its earnings, of others. The most familiar items in this category are stocks, bonds, mortgages, notes, etc. These are representative property in that the tangibles they represent could be destroyed. In such an event the intangible property would lose all of its value.

Copyrights and patents are intangibles of a somewhat different type, and goodwill, franchise value, and corporate excess are names given to the capitalized earning power of a business, insofar as it exceeds the tangible assets of the business. In some states taxes are levied on the "corporate excess" of businesses in the same manner as property taxes are levied on all other property.

In states such as West Virginia, where both realty and personalty in the same class are taxed at the same rate, a careful division of the two classes of property by the appraiser is not essential. However, where personalty is not taxed, or taxed at a different rate from that of real estate, differences between the two classes become extremely important.

Many court decisions are vague and conflicting as to what constitutes real property and what is personal property. Often the intent of the owner becomes a prime factor in the decision.

Generally, in assessment practices, all appurtenances permanently attached to a structure are considered a part of the realty. However, if such appurtenances, though permanently attached, are not intended by the owner to become a part of the realty, the courts have frequently held that they are not a part of the realty and are therefore personal property.

The average assessor finds it difficult to draw a fine line between realty and personalty when such items as permanently installed store fixtures, refrigerators and other equipment are involved. He must often rely entirely on the owner's intent.

In many jurisdictions machinery and equipment are assessed and taxed separately at a different rate. This situation poses many imponderables to assessing officials. In many modern industrial plants, the structure and machinery and equipment are an integral part of each other, neither having any appreciable value if separated. This is commonly known as "special purpose" property. The assessment of such property usually requires an industrial expert since seldom is the assessor or any of his staff qualified to make such a distinction in the many different types of industry.

The West Virginia Code § 11-3-7 states:

> "In assessing the value of buildings or structures, the assessor shall ascertain the value of all machinery and fixtures attached thereto, and include the same in the value of the building charged to the owner, unless it appears that such machinery and fixtures are owned by some person other than the owner of the building, in which case the value of such machinery and fixtures shall be assessed to their owner as personal property; and the value of such machinery or fixtures shall be thereafter increased or reduced according as they may have increased or decreased in actual value."

The West Virginia Code § 11-5-3 states:

> "The words personal property, as used in this chapter, shall include all fixtures attached to land, if not included in the evaluation of such land entered in the proper land book; all things of value, moveable and tangible, which are the subjects of ownership; all chattels, real and personal; all notes, bonds, and accounts receivable, stocks and other intangible property."

In actual appraisal and assessing practice in West Virginia the distinction between real and personal property generally follows the moveable and immoveable theory in that anything attached to and made a part of the land is real property, while everything that can be taken up and moved is personal property.

West Virginia classifies its personal property into three classes. Class I personal property includes all tangible personal property employed exclusively in agriculture including horticulture and grazing; all products of agriculture (including livestock) while owned by the producer; all notes, bonds, bills and accounts receivable, stocks and any other intangible personal property.

Class III personal property includes all personal property situated outside of municipalities, exclusive of Class I personal property.

Class IV personal property includes all personal property situated inside municipalities, exclusive of Class I personal property.

The lowest tax rate is applied to Class I property, while the Class III rate is substantially three times that of Class I, and the Class IV rate is substantially four times that of Class I.

The West Virginia Code § 11-5-3 gives the following definitions:

1. "Agriculture" - shall mean the cultivation of the soil, including the planting and harvesting of crops and the breeding and management of livestock.

2. "Horticulture" - shall mean plant production of every character except forestry.

3. "Grazing" - shall mean the use of land for pasturage.

4. "Products of agriculture" - shall mean those things the existence of which follows directly from the activity of agriculture, horticulture or grazing, including dairy, poultry, bee and any other similar products, whether in the natural form or processed as an incident to the marketing of the raw material.

5. "Producer" - shall mean the person who is actually engaged in the agriculture, horticulture and grazing which gives existence and fruition to products of agriculture as distinguished from the broker or middleman.

6. "While owned by the producer" - shall mean while title is in the producer as above defined.

7. "Employed exclusively" - shall mean that the preponderant and the sole gainful use is for the designated purpose.

LIST OF PERSONAL PROPERTY OWNERS

Every assessor should compile a comprehensive list of all persons by municipalities and districts, who are known, or may reasonably be presumed, to own or control taxable personal property.

Information for the preparation of this list may be obtained from many sources and the following sources are intended to be suggestive and not exhaustive:

Previous tax rolls
City directories
Telephone directories
License tax lists
Lists of corporations doing business within the State
Employee or payroll lists
Lists of motor vehicle registrants
Registration lists of voters
Customer lists of water, gas, and electric companies
Conditional sales records
Store-to-store and house-to-house canvasses

This list of personal property owners should be kept up-to-date by adding the names of new residents, withdrawing the names of persons moving out of the county and by changing the listing of residents moving from one municipality or district to another.

This list may be used for mailing out or delivering the forms on which the returns are to be made. As the returns are received by mail or otherwise the names of such taxpayers should be checked on the list so that the assessor and his deputies will have the names of the taxpayers who have not made returns and may make further inquiries or investigation of same.

FORM OF PERSONAL PROPERTY BOOK

The assessor shall enter the names and post office addresses of the owners of personal property, alphabetically arranged by districts, showing separately the values of:

1. All tangible personal property employed exclusively in agriculture including horticulture and grazing;

2. All products of agriculture (including livestock) while owned by the producer;

3. All notes, bonds, bills and accounts receivable, stocks and any other intangible personal property;

4. The total of one, two, and three;

5. All other tangible personal property.

The tax commissioner may prescribe such itemization and further information as he deems necessary. The assessor shall make the same number of copies and extend the levies in the same way as he does with the land book. [§ 11-5-2]

IN WHAT DISTRICT PERSONALTY ASSESSED

Every person required by law to list personal property for taxation shall list the tangible personal property in the taxing district where it is on the first day of the assessment year. Chattels real are to be listed in the taxing district where the land to which they relate is located.

Any notes, bonds, bills and accounts receivable, stocks, and other intangible personal property subject to taxation shall be listed in the district where the owner, or person having charge of the property, resides. This applies whether the property is in or out of the State.

Capital, and intangible property, excluding real estate and chattels real, used in any trade or business, except agriculture, shall be assessed in the district where the principal office of the business is located. If there is no such office, then in the district where the primary operations are carried on.

Goods, chattels and other tangible personal property shall be assessed in the district where located on the assessment date of July 1st.

The assessment and payment of taxes in any county, or district, in any year exonerates payment in any other county, or district, for that year.

In the assessment of leasehold estates, the value of the leasehold estate shall be deducted from the total value of the estate so that the two shall equal the value of the estate as a whole. [§ 11-5-4]

OWNER'S INTENT TO RELOCATE PROPERTY AFTER ASSESSMENT DATE

Property located in the State on the assessment date of July 1st is subject to assessment for property tax purposes even though there is intent to remove the property later on. The sheriff has the authority to distrain such property for payment of taxes if it is about to be removed, even before the taxes become delinquent. [§ 11A-2-3]

ASSESSMENT OF TRANSIENTS SELLING GOODS

Any transient person offering goods or merchandise for sale, either by auction, or otherwise, not heretofore assessed in any county, shall apply to the assessor of the county in which goods are about to be offered for sale to have the merchandise assessed.

This must be done before such goods or merchandise are sold and the assessor shall be paid the taxes levied for the current year.

If, at the time of such assessment, the levy rates for the current year have not been determined, the assessor shall extend and collect taxes on the assessed valuation according to the rates levied for the prior year.

If the amount of taxes paid is afterwards found to be in excess of the taxes that would have been levied for the current year, the excess shall be refunded.

If the personal property book for the current year is not completed, the assessor shall enter such an assessment in the appropriate manner.

If the personal property book has been completed and certified, it shall be treated as a supplemental assessment.

The assessor shall deliver to the taxpayer a receipt for the amount of taxes collected, showing the type of goods or merchandise on which such taxes were paid, the assessed valuation, and the year. The receipt shall be signed by the assessor and attested to by the county clerk.

Such receipt shall discharge the taxpayer from any further liability for taxes in any county of the State on account of such goods or merchandise for the current year.

All such taxes collected shall be reported by the assessor to the county clerk. It is the duty of the county clerk to properly charge the assessor with such collections in the supplement to the personal property book.

The assessor shall distribute such taxes collected by him to the levying bodies according to the rate levied by each for the current year. [§ 11-5-8]

ASSESSMENT OF STOCK AND REALTY OF BANKS

Assessors shall assess shares of stock in a banking institution, national banking association, industrial loan company, building and loan association, and federal savings and loan association at its true and actual value.

The true and actual value of such shares shall be obtained by the best information available to the assessor "whether from any return made by such bank or association to any officer of the State or the United States, from actual sales of stock, from answers to questions by the assessors as hereinafter provided, or from other trustworthy sources".

On the form used to report the property tax return of banking institutions (LGR 12:04) the true and actual value of the stock includes the value of all assets. The real estate of any bank or association is to be appraised in the same manner as all other real estate and subtracted from the value of the stock. Computations for this are completed in Schedule F of the above named form. After this is done, the remainder of the value is considered as Class I property. The County Equalization Rate is applied and this gives you the assessed value of Class I property. [§§ 11-3-14, 11-3-14a]

HOUSEHOLD GOODS AND PERSONAL EFFECTS

Household goods (which is deemed to mean only personal property and household goods commonly found within the house and items used to care for the house and its surrounding property when not held or leased for profit) and personal effects (which is deemed to mean only articles and items of personal property commonly worn on or about the human body or carried by a person and normally thought to be associated with the person) when not held or used for profit shall be exempt from taxation.

The term household goods and personal effects includes the following properties: furniture, clothing, appliances, antiques, paintings, jewelry and other similar tangible properties of the small portable nature. [§ 11-3-9]

VALUATION OF CREDITS AND INVESTMENTS

The value of any credit, if the solvency of the party having liability is doubtful, or if the claim is disputed, shall be estimated at its probable value. If such credit is payable in anything other than money, its probable value in money shall be listed.

If a solvent credit is interest bearing, the amount of principal and unpaid interest as of the assessment date shall be listed. If it is not interest bearing, and is not due, the interest for the period from the assessment date until it is due and payable, may be deducted.

Investments in notes, bonds, bills, stocks and other intangible property shall be valued at their market price, or if there is no known market price, at their property value according to the best information available. [§ 11-5-5]

PROPERTY OF STOCK OF CORPORATIONS

When the property, stock or capital of any company, whether incorporated or not, is assessed to such company, no person owning any share, or interest therein, shall be required to list the same. [§ 11-5-6]

DOG LAWS

The assessor and his deputies, at the time they are making the assessment of personal property, are to assess and collect a head tax of $1.00 on each male, or spayed female dog, and $2.00 on each unspayed female dog above the age of six months found within their jurisdiction. Any such head tax on dogs as may be levied by the ordinances of each municipality within the county are to also be collected.

Whenever a dog either is acquired or becomes six months of age after the assessment of the personal property of the owner, keeper or harborer thereof, the said owner, keeper or harborer of said dog shall, within ten days after the acquisition or maturation, register the said dog with the assessor, and pay the head tax thereon unless the prior owner, keeper or harborer paid the head tax.

In the event that the owner, keeper or person having in his possession, or allowing to remain on any premises under his control, any dog above the age of six months, fails or refuses to pay such tax when the same is assessed, or within fifteen days thereafter, to the assessor or deputy assessor, then the assessor or deputy assessor must certify such tax to the county dog warden, or if there be no county dog warden to the county sheriff, who shall take charge of the dog for which the tax is delinquent and impound the same for a period of fifteen days. For this service he shall be allowed a fee of $1.50 to be charged against the delinquent taxpayer in addition to the taxes herein provided for.

In case the tax and impounding charge are not paid within the period of fifteen days, the sheriff may sell or kill such dog.

In addition to the head tax on dogs, the owner of any dog, above the age of six months shall be permitted to place a value on the dog and have it assessed as other personal property is assessed. [§§ 19-20-1, 19-20-2, 19-20-11, 19-20-12]

INVENTORIES

The basis of valuation of stocks of materials held for processing or for use in production, stocks of finished or partly finished goods of manufacturers and processors and stocks or property held for sale in the ordinary course of a trade or business, should be the cost to the owner.

The assessment date, as for other property, is July 1. If the assessor is unable to secure an accurate inventory as of the assessment date, the alternative is to value such inventory for assessment upon the basis of the average value of the stock owned or held by the taxpayer during the preceding twelve months.

Automobiles, trailers, boats, motorcycles, farm tractors, and etc. held in inventory are subject to assessment for property tax purposes. The party having possession is considered the owner and should be held responsible. The basis for valuation should be the cost to the dealer.

LEASED OR CONSIGNED PERSONAL PROPERTY

All tangible personal property such as machinery, fixtures and equipment located in the State and leased to persons or corporations in the State but owned by persons, firms or corporations located outside the State should be assessed to the actual owners of such property regardless of any provision in the lease with respect to the payment of taxes assessed against such property.

It is the duty of every agent, having the custody of personal property, to list the same for taxation in the name of the owner. Such custodian is not personally chargeable therewith for purposes of taxation if he so lists it, on the request of the assessor. For failure or refusal to do so, the assessor may properly assess in the name of the custodian.

LEASED OR WHOLLY OWNED DATA PROCESSING AND COPYING EQUIPMENT

The majority of data processing and copying equipment is leased by the manufacturer. Such leased equipment is assessed to the owner.

After discovering the property, a value must be established for it, based on the statutory standard of fair market value. This is interpreted to mean a sale conforming to the willing-buyer, willing-seller concept.

For some reason, most manufacturers of this type equipment are reluctant to furnish an accurate selling price.

If manufacturer's cost is the only information that has been reported, it is recommended that the assessor try to obtain more information from the lessor, such as average rentals and actual selling price. Compare the equipment in question with similar equipment for which such information is available.

In the case of IBM and XEROX, these companies will furnish the assessor annual listings of their equipment.

IBM lists each item at its selling price. The State Tax Department presently appraises IBM at its selling price less the appropriate depreciation based on the age of the equipment.

Xerox will only furnish its cost value, which is their actual out-of-pocket cost of the average machine of the lot, rather than the selling price. As Xerox's cost value is not equivalent to its selling or replacement cost, the State Tax Department in its appraisal presently applies a 190% multiplier to the Xerox cost value. It is felt that the 190% multiplied by the cost value should cover overhead, profit, and selling expense. This method should result in a conservative replacement cost in the absence of an accurate selling cost less the appropriate depreciation based on the age of the equipment.

Depreciation applied by the assessor should be at the rate of 10% per year with a maximum of 80%.

In the final analysis, replacement cost less depreciation, or market value, is the basis for valuation of all leased equipment. This simply is not available in all instances, which necessitates the use of other approaches on the order of those described above.

MOTOR VEHICLES

In determining the assessed valuation to be placed upon automobiles, trucks and other motor vehicles, the assessor should ascertain the make, model and mechanical condition of each vehicle and estimate its current value.

For the purpose of fixing the true and actual value of automobiles, it is recommended that the assessor use the automobile valuation schedule furnished annually by the state tax commissioner as a guide. This schedule lists those automobiles most commonly in use throughout the State. The recommended valuation is based upon the average loan value taken from the official used car guide compiled and published by the National Automobile Dealer's Association.

The use of these schedules will materially aid all assessors in developing fair and accurate automobile valuations as well as providing uniformity of assessment practices throughout the State.

In no case can a deduction be allowed from the assessed valuation of a motor vehicle by reason of the fact that the purchase price, or any part thereof, has not been paid.

The department of motor vehicles furnished cards or a computer listing each year for the use of the assessors showing all motor vehicles registered in each county of the State. These cards and listings show the name and address of the owner of the vehicle as well as the make, year and model.

AD VALOREM TAX TREATMENT OF POLLUTION ABATEMENT FACILITIES

The West Virginia State Legislature has recognized and declared that pollution control facilities are required for the protection and benefit of the environment and general welfare of the people. However, the facilities are nonproductive, do not add to the economic value of a business enterprise and does not have a market value after installation in excess of salvage value.

A pollution control facility means any personal property designed, constructed or installed primarily for the purpose of abating or reducing water or air pollution or contamination by removing, altering, disposing, treating, storing or dispersing the concentration of pollutants, contaminants, wastes or heat in compliance with air or water quality or effluent standards prescribed by or promulgated under the laws of this State or the United States, the design, construction and installation of which personal property was approved as a pollution control facility by the water resources division of the department of natural resources or the air pollution control commission, as the case may be.

The value of a pollution control facility first placed in operation subsequent to July one, one thousand nine hundred seventy-three (1973), shall, for the purpose of ad valorem property taxation, be deemed to be its salvage value, that is to say, the price for which such facility would sell in place if voluntarily offered for sale by the owner thereof less the cost of removal of the facility. Administratively the salvage value will be 15% of the original cost.

Each county assessor will be notified by the State Tax Department before August 1st of any eligible facility operating in his county on the preceding July 1st assessment day together with the salvage value of each such facility. Said notice will recommend that the assessor use the salvage value provided as the appraised value of such facility. [§§ 11-6A-1, 11-6A-2, 11-6A-3, 11-6A-4]

ASSESSMENT OF PUBLIC SERVICE CORPORATIONS

On or before the first day of May in each year a return in writing to the board of public works shall be delivered to the tax commissioner by the following:

1. The owner or operator of every railroad, wholly or in part within this State. The words "owner or operator," as applied herein to railroad companies, shall include every railroad company incorporated by or under the laws of this State for the purpose of constructing and operating a railroad, or of operating part of a railroad within this State, whether such railroad or any part of it be in operation or not; and shall also include every other railroad company or persons or associations of persons, owning or operating a railroad or part of a railroad in this State on which freight or passengers, or both, are carried for compensation. The word "railroad," as used herein includes every street, city, suburban or electric or other railroad, or railway.

2. By the owner or operator of every railroad bridge upon which a separate toll or fare is charged.

3. By the owner or operator of every car or line of cars used upon any railroad within the State for transportation or accommodation of freight or passengers, other than such owners or operators as may own or operate a railroad within the State.

4. By the owner or operator of every express company or express line, wholly or in part within this State, used for the transportation by steam or otherwise of freight and other articles of commerce.

5. By the owner or operator of every pipeline, wholly or in part within this State, used for the transportation of oil or gas or water, whether such oil or gas or water be owned by such owner or operator or not, or for the transmission of electrical or other power, or the transmission of steam or heat and power or of articles by pneumatic or other power.

6. By the owner or operator of every telegraph or telephone line, wholly or in part within this State, except private lines not operated for compensation.

7. By the owner and operator of every gas company and electric lighting company furnishing gas or electricity for lighting, heating or power purposes; and hydroelectric companies for the generation and transmission of light, heat or power; water companies furnishing or distributing water.

All buildings and real estate owned or held by such owner or operator, and used or occupied for any purpose immediately connected with the property, shall be included in such assessment by the board of public works; but all real estate owned or held by any such owner or operator and not used or occupied for purposes immediately connected with the property, shall be assessed by the local assessor.

Each county assessor should be aware of all public utility property located within his or her county, as to location, description, taxing district, etc., and the amount of assessment (if possible).

Some utilities have over the years abandoned buildings in certain areas and are now leasing or renting these buildings to corporations or individuals for warehouses, this is especially the case with railroad depots. There are also many abandoned railroad right-of-ways that have not been assessed since their abandonment.

There are within certain counties, large tracts of land that have been bought by some public utility companies and are held for future expansion or for speculation. The assessor should be made aware of this since some of these companies are not licensed with the State and should be assessed locally.

RAILROADS

1. Check for excess right-of-ways, especially in areas where there is farming or industrial activity.

2. Check for abandoned right-of-ways where tracks have been removed and the land is still owned by railroad companies and is not in use.

3. Be especially watchful for lots or parcels of land in municipalities which are owned by a railroad company and vacant but not in use; or lots and parcels of land where depots, water tanks, coaling stations have been removed and the land not in use.

TELEPHONE AND TELEGRAPH COMPANIES

1. Telephone and telegraph companies normally buy only land they are using for microwave tower sites, telephone exchanges, etc. However, in some cases lots are bought for future expansion; these should be checked and if vacant should be assessed locally.

WATER COMPANIES

1. Check water treatment and filtering plants, pump houses, water storage tank sites, etc., for excess acreage.

Public utility property that is assessed locally, should be reviewed since most of these have probably never been appraised, and the same value carried year after year.

In a recent appraisal, due to field checking of a parcel of land owned by a public utility (C & O R.R.) assessed locally at $10,000 was reappraised and entered on the land book at $426,450 or a net increase of $416,450.

In another case a parcel of land owned by a public utility which had not operated since 1930 (W. Va. & Southern R.R.) was assessed by the board of public works for $500. This property was entered on the land book locally and assessed for $30,000.

FORMULA FOR CALCULATING RIGHT-OF-WAYS

As a guide for determining acreage used as "right-of-ways" for pipelines, meter houses, access roads, etc. use a standard width of 50 feet times the length across the parcel of land from the farthest two points.

2000'	(length)
50'	(width)
100000	Square feet multiplied by .23
.23	
2.30000	Acres

Deduct calculated acreage from original tract.

50.00	Acre tract
2.30	Less (usage)
47.70	Acres

The residue of 47.70 acres to be assessed by the assessor.

Some electric power companies use a right-of-way width of up to 600 feet. When checking right-of-ways of unusual width measure the width of the right-of-way and use the above formula.

This guide to be used only when a tract of land is owned by a utility company, and not to be confused with right-of-way easements across privately owned land.

Check terrain to see if excess right-of-way is in the area of cuts, fills or level land. The right-of-way width can be determined by checking tax maps for any specific area.

ASSESSMENT
SPECIALIZED PROPERTIES

AUTOMOBILE LAUNDRIES

An automobile laundry is popularly known as a "fast car wash".

In estimating value, buildings and equipment should be considered as commercial personal property.

Some modern laundries are equipped with complete automatic car washing systems requiring little manual labor. Others are varied pieces of equipment, and employ marginal labor for nonmechanized functions. Another development in the automobile laundry field is the twenty-five cent coin-operated "do it yourself facility" which requires a minimum of equipment and can be housed in a building of moderate cost. Most of these laundries have vending machines for throw-away paper wiping cloths and vacuum cleaners for inside use. A full time attendant is not required.

The cost approach is the primary consideration in the valuation of a "fast car wash" because: the equipment forms an intricate part of the special purpose building in which it is housed and the equipment is costly and undergoes rapid depreciation and obsolescence. The value of the equipment is estimated by replacement cost less depreciation. Depreciation should include both physical deterioration and obsolescence.

Land value is estimated by comparing the site with comparable land sales in the area. Location is an important factor, having good visibility, easy entry and exit. The value of the building is its estimated replacement cost less depreciation.

The income approach to value is usually secondary.

Small coin-operated washes, for user operations cost from $28,000 to $36,000 for two stalls and $44,000 to $59,000 for four stalls including equipment and building.

Some typical costs would be from $50,000 to $86,000 for a semiautomatic wash and from $71,000 to $123,000 for a fully automated car wash with personnel only for interior cleaning and before and after services.

BOWLING CENTERS

A modern bowling center is a recreational complex these days that may include, in addition to bowling, a restaurant, cocktail lounge, billiard room, bowling retail shop, and various amusement and vending machines.

The value of bowling centers can vary widely throughout a given county because of over-expansion in the industry, severe competition, and resulting instability.

The cost approach may be applied in most instances in estimating the value. The income approach should be the primary method of estimating value when the required information can be obtained.

Depreciation is a significant factor in the valuation of equipment because of the high initial cost of bowling equipment, with little or no market existing for used equipment.

Bowling equipment for a new alley is generally sold at a price per lane or pair of alleys including all equipment necessary for operation.

Some sample costs for a base unit with 32 lanes with 130 sets of pins, 160 balls, 320 pairs of shoes, scoring tables and chairs, bowlers' and spectator seats, and all ancillary equipment necessary for operation, including subway ball returns, excluding automatic pinsetters may range from $7,700 to $9,200 per lane. Deduct for above ground ball return from $450 to $650 per lane; add for automatic pinsetters from $7,200 to $9,900 per lane; add for computerized scorekeeper from $3,200 to $4,800 per lane.

COOPERATIVE APARTMENT HOUSES

A cooperative or co-op is a form of property ownership in which a corporation is established to hold title in property and to lease the property to shareholders in the corporation. Cooperatives have been established primarily for housing purposes. A corporation is set up by filing articles of incorporation as specified in each state. The corporation bylaws define how the corporation will function.

Persons wishing to occupy units which are owned by the corporation sign a subscription agreement for stock and enter into an occupancy agreement or proprietary lease. In the subscription agreement and in the lease the member agrees to pay a proportional share of expenses incurred by the corporation for maintenance, property taxes and debt service. Federal income tax law allows the tenant to deduct the portion of each payment which represents property taxes and interest just as in ownership in severalty. The tenant right or interest in the cooperative is considered to be personal property.

Much like a tenant in a lease, the occupant is restricted in the use to which he or she may put the property. If the tenant fails to pay monthly assessments the lease agreement may provide for the termination of the tenant's rights.

Certain difficulties arise when the tenant wishes to sell interest in the cooperative. The corporation may retain the right of first refusal and may require that the occupant sell the shares for the original price paid.

All three approaches to value should be utilized in valuing a cooperative apartment house project - The cost approach, income approach, and market approach.

In the cost approach, the estimated cost of construction of the apartment building less depreciation is added to the value of the land.

To estimate the value of the property by the income approach, the gross annual rental value of all apartments less expenses is capitalized to indicate the value of the cooperative apartment house.

In the market approach, sales of similar cooperative units are analyzed and related to the apartment building under consideration.

All three approaches should be correlated whenever possible. The assessment is made for the property as a whole and assessed to the corporation operating the project. It is Class III or Class IV property, unless all units are occupied as residences by stockholders; in this case it is Class II.

CONDOMINIUM

A condominium is a form of ownership in which an individual owns a portion of the property in a project in fee simple ownership and has a pro rata share in common elements. Unlike the cooperative in which a corporation is responsible for the mortgage financing of a project, each condominium owner secures his or her own financing. It is more difficult to eject a condominium owner from a project for objectionable behavior or failing to pay assessments because he or she has a real property interest.

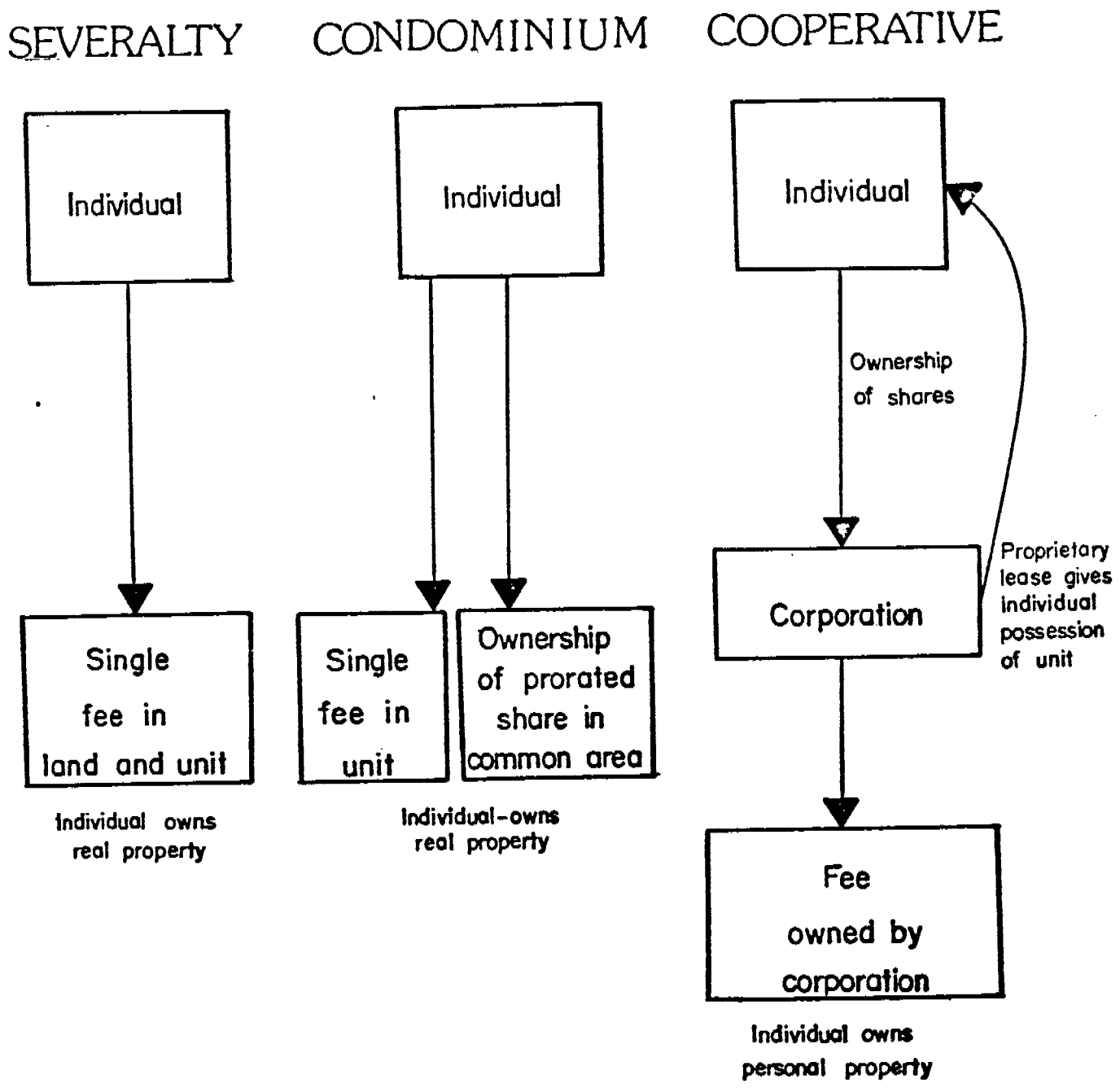
Under a cooperative, if the corporation defaults on the payment of the mortgage because a number of the tenants cannot make payments, the entire project could be lost through foreclosure. In a condominium, only those tenants who failed to make their personal mortgage payments would be foreclosed and the other owners would not be affected.

To transfer title, the condominium owner executes a deed to his unit as though it were an individual piece of property.

Each apartment owner's unit in a condominium is taxed separately as real estate, and it may be mortgaged, sold, rented, or otherwise disposed of by him.

It is considered Class II property when owned and occupied for residential purposes by the owner.

All three approaches to value should be used to estimate the value of an apartment house condominium and to determine the value of each unit. However, the market approach should be given primary consideration just as in the case of other residential property.


SEVERALTY
CONDOMINIUM
COOPERATIVE
Individual
Single fee in land and unit
Individual owns real property
Individual
Single fee in unit
Ownership of prorated share in common area
Individual-owns real property
Individual
Ownership of shares
Corporation
Proprietary lease gives individual possession of unit
Fee owned by corporation
Individual owns personal property

ASSESSMENT OF FRUIT ORCHARDS AND RELATED PROPERTY

Fruit orchards and property used in the production and processing of the fruit are valued as real and personal property. The orchard itself may fall within either Class II or Class III depending upon whether the use of the land coincides with the statutory definition of Class II property and whether fruit packaging and processing machinery and equipment are located on the same tract containing the orchard.

Class II property includes:

> ". . . all farms including land used for horticulture and grazing, occupied and cultivated by their owners or bona fide tenants." [§ 11-8-5]

The term "farm" means:

> ". . . a tract or contiguous tracts of land used for agriculture, horticulture or grazing." .[§ 11-4-3]

"Occupied and cultivated" is defined as:

> ". . . subjected as a unit to farm purposes, whether used for habitation or not and although parts may be lying fallow, in timber, or in wastelands." [§ 11-4-3]

All products of agriculture while owned by the producer are Class I personal property. Thus the fruit in its natural or processed form, packaged or unpackaged, should be assessed as Class I property. Note, however, that while products of agriculture owned by the producer are to receive favored tax treatment through the packaging and processing stages of fruit production, the activities of packaging and processing do not constitute use of property for agricultural, horticultural or grazing purposes. Property used in these activities, including land, buildings, machinery and equipment, should be assessed in various classes using the test set forth.

GRADING AND PACKAGING FRUIT

Land and buildings used to house packaging equipment may be assessed either as Class II or Class III property.

Machinery and equipment used to grade and package the fruit or fruit product may be Class I or Class III.

The test for application of the higher classification is whether the grading and packaging activity constitutes a commercial activity where the property is used to package products of others for a fee.

A small packaging operation in which a farmer merely packages his own fruit for sale does not constitute a commercial activity. Thus land and buildings used in such an operation should be assessed as Class II property, while any equipment used to package the fruit should be placed in Class I.

Where a farmer packages his own fruit and fruit of others for a fee, Class III is appropriate.

FRUIT PROCESSING

Fruit processing is one aspect of the food processing industry. Thus commercial fruit processing establishments have been deemed to constitute property used for commercial non-agricultural purposes. Classification of fruit processing establishments for property tax purposes should be on the same basis as other commercial establishments.

Land and buildings used for a fruit processing operation may be in either Class II or Class III, whereas, machinery and equipment used for such activity may be either Class I or Class III.

This test for application of favored tax treatment is whether the owner of the processing property uses it in the processing of fruit strictly for his own consumption or for the purpose of commercial sale.

The Tax Department advises the assessment of fruit orchards and related real property as follows:

REAL PROPERTY

1. Fruit orchards exclusive of food processing equipment and machinery - Class II.

2. Fruit orchards containing on the same tract or parcel fruit processing equipment and machinery - Class III.

3. Warehouses not containing or adjacent to fruit processing equipment and machinery and having the characteristics of a barn or silo - Class II.

4. Warehouses containing or adjacent to fruit processing equipment and machinery and located on the same tract or used for any purpose other than mere storage at room temperature (i.e., peeling and freezing of the fruit) - Class III.

5. Buildings or structures used only in the grading and packaging of the owner's fruit where no processing activity occurs within the building or upon the parcel where located - Class II.

6. Buildings or structures used in the grading and packaging of fruit owned by others - Class III.

7. Buildings or structures containing fruit processing equipment where such equipment is used to process fruit for the private consumption of the owner - Class II.

8. Buildings or structures containing machinery and equipment used in the processing of fruit for commercial sale, either wholesale or retail - Class III.

The Tax Department advises the assessment of fruit orchards and related personal property as follows:

PERSONAL PROPERTY

1. Tractors, sprayers, cultivators, harvesters and other related moveable equipment used to plant and harvest the fruit crop - Class I.

2. Machinery and equipment used to grade and package fruit of the owner thereof - Class I.

3. Machinery and equipment used to grade and package fruit of others for a fee - Class III.

4. Machinery and equipment used to grade and package both for the owner and others for a fee - Class III.

5. Machinery and equipment used to process fruit for the private use and consumption of the owner - Class I.

6. Machinery and equipment used to process fruit for commercial sale, either wholesale or retail - Class III.

7. Machinery and equipment used to process fruit of the owner for his private consumption and for himself or others for commercial sale - Class III.

MOBILE HOMES

Mobile homes are moveable structures over eight feet wide and thirty-two feet long. They are designed to be used as part or full time dwellings when connected to necessary utilities and are available in widths of 10' to 30'. Double wide or triple wide are terms used to describe the mobile home consisting of two or three sections.

The homes are usually described in terms of width and length, 12' x 52', 24' x 60', etc. The nominal length of the mobile home, as used in practice, includes the length of the tow bar, usually about four feet. Thus a nominal 12' x 52' mobile home is actually 48 feet long, with an area of 576 square feet.

Sidewalls are usually constructed of 2" x 3" or 2" x 4" studs, 16" on center, with horizontal bracing provided by the exterior and interior skins. Exteriors are normally aluminum sheet and interiors are of plywood veneer with insulation between.

Ceiling heights are 7'0 to 8'0 while some mobile homes may have raised floors in certain areas such as kitchens. Floors are normally covered with resilient flooring or carpet. Most mobile homes will come equipped with draperies as standard equipment.

COST DEFINITIONS

Costs, as in all structures, can only be divided into qualities by taking selected ranges on a cost curve. For mobile homes they are retail prices, including normal delivery and set-up charges within 100 miles of the dealer. Complete kitchens, heating, and hot water systems are included as well as one bath per unit; for extra baths, add costs as listed.

Although some units are sold furnished, furniture is not included in the costs in this section. Aluminum skirts, patio roof, carports, and other exterior site improvements are priced as extras. Air conditioning is also listed as an extra.

Fees, taxes, and licenses are not included and should be added locally.

Costs are based on the square foot of actual area. A nominal 24' x 60' mobile home will actually be approximately 24' x 56' with an area of 1,344 square feet for cost computation.

EXCELLENT MOBILE HOMES

The Excellent mobile home does not include the extreme luxury homes with individually designed interiors, although in many the buyer will have a choice of many interior items such as carpeting and color schemes before the mobile home is finished.

Exteriors are usually finished to resemble conventional housing with aluminum or other siding in various patterns and textures resembling wood. There is usually ornamentation of plastic, imitation brick or stone, etc.

Walls are 4" thick, 8' high, with excellent fenestration consisting of residential type windows, sliding doors and ornamental entrances.

Interiors will have natural hardwood veneers. Cabinets and hardware are of excellent quality with counters of the best plastics. Floor coverings will be of sheet vinyl and good to excellent carpeting.

Heating is through floor and ceiling ducts and is ready to adapt for air conditioning.

Plumbing is of best quality as is the kitchen equipment, with built-in disposals and dishwashers. Excellent refrigerators with frozen food compartments may be built in.

GOOD MOBILE HOMES

The Good quality mobile home will have an exterior finish of aluminum, plywood or hardboard, sometimes a combination of two. The finish is often in various textures such as horizontal aluminum siding, board and batten, wood grain, etc. Tow bars are normally removable.

Walls are 4" thick and 7'6" to 8' high with excellent fenestration, sliding doors, shutters, etc.

Interior is of good quality prefinished plywood, cabinets and hardware are of good quality, and there are many extra interior appointments.

Heating has insulated perimeter ducts prepared for air conditioning. Resilient flooring and carpeting are of good quality.

Kitchen equipment is good quality and may include dishwasher and garbage disposal.

AVERAGE MOBILE HOMES

The Average mobile home will have an exterior of pre-finished aluminum with the fasteners generally hidden.

Walls are 3" to 4" thick, 7'6" to 8' high, with adequate fenestration and attractive entrance. Often, the exteriors will have a combination of two textures or two colors.

Interiors are medium quality prefinished plywood. Resilient flooring is of conventional residential quality, as well as the carpeting. Cabinetry and hardware are average quality with self-closing cabinet doors.

Heating is forced air through insulated ducting with provision for air conditioning.

Plumbing and kitchen equipment are above minimums.

LOW COST MOBILE HOMES

The Low Cost mobile home is generally a structure built to minimum standards. They do not include the cheapest construction available prior to enactment of federal standards.

Exterior finish is prepainted or prefinished .019" aluminum, usually with corrugated panels. Many have exposed fasteners. Walls are typically 3" thick, 7'0" to 7'6" high, with minimum fenestration including low cost windows and doors.

Heating and ducting are normally minimal with uninsulated straight line forced air ducts.

Interiors usually are printed plywood with floors of linoleum and low quality carpet. Cabinetry and hardware are standard inexpensive units.

OPTIONAL ITEMS

Skirts: $3.00 to $5.00 for design coordinated materials. Carport and Patio Covers; air conditioning; window or door awnings, aluminum; steps and landings; second bath with water closet, lavatory and shower; second bath with water closet and lavatory.

MODULAR HOMES

Structures built or erected from one or more three-dimensional cubical or box-shaped units which are completely factory-finished and require only to be connected together at the building site are called "modular." This broad definition is inclusive of single and multifamily configurations as well as other building types, but is limited only to those structures which are designed and fabricated to meet local codes and other pertinent regulations.

The single element which sets the modular family apart from mobile home types is their construction specifications. Modular units are designed and fabricated to meet the same basic building-code requirements used by conventionally built housing.

The mobile home, on the other hand, follows design and fabrication standards which provide a form of suitable shelter, but it will not, as a general rule, meet local building-code requirements. When such units do meet local codes and are affixed to permanent foundation systems, they should no longer be called "mobile" but instead "modular." The word "modular" refers only to those units which meet local building codes and are, thus, eligible for long-term amortized mortgage financing.

The success of the modular form mobile home, particularly in recent years, has provoked the thinking of many individuals seriously concerned with the total housing complex. It has raised an issue which may ultimately lead to a new approach in the financing of permanent housing. In effect, some experts feel that the high annual interest rate associated with mobile home financing is not a notably deterrent feature. The consumer reasoning which must be concluded is not concerned with interest rate, nor how long the unit will last, nor what will be the equity at the end of the finance term, but would instead seem to hinge on the amount of monthly payment.

UNIQUE FEATURES OF SHOPPING CENTER EVALUATION

If the shopping center is already established, or is not yet built but has achieved executed agreements to lease, valuation of land must be based on capitalization of annual residual net income produced by the yield of the lease rentals; if the shopping center is merely projected and has no lease agreements, valuation of the land can only be based on market data showing comparable sales of similar land in similar situations.

The property must be valued as a whole, and not as separate individual stores or buildings.

The need for the shopping center must be proven by macro- and micro-market surveys. An estimate of rent achievement based on percentage of gross sales must be made, in addition to the minimum guaranteed yield of the leases.

Sales of improved commercial properties in the area cannot be used as comparable in evaluating the subject, because no two shopping centers are ever precisely alike in terms of land area, parking ratio to store areas, tenant mix, goods offered, hours open, lease particulars, gross expenses, and net income produced per square foot of store occupancy.

In these respects, every shopping center is a unique entity and can only be evaluated by capitalization of its guaranteed net income.

VALUATION GUIDES FOR
NATURAL RESOURCES

VALUATION OF COAL DEPOSITS

Coal has been the object of property tax since West Virginia became a State. Our Legislature has recognized that coal not only contributes to the value of land, but is a separate assessable estate. [§ 11-4-9]

The State Tax Department and each county assessor work closely together in the valuation of coal properties. As assessor you are charged with the authority and responsibility of assessing all property in your county at a value which, within the requirements of relevant statutes, approaches fair market value. [§ 11-3-1] The tax commissioner is charged with the responsibility of appraising all properties including coal property in each county. Thus, coal values provided to the counties by the State Tax Department serve as a guide or aid to you in assessing coal in your respective counties. [§ 18-9A-11] These values will be provided to you by the department annually prior to July 1, the assessment date. [§ 11-3-1]

Faced with the task of appraising coal properties in your county, the tax department investigated and has used over the years several methods of coal valuation. After considerable thought and investigation the tax department has arrived at a method which it believes will in most cases lead to a determination of values which is reasonable and which can be accomplished given the administrative and budgetary restraints upon the tax department.

DETERMINATION OF COAL VALUES BY APPRAISAL AT THE STATE TAX DEPARTMENT LEVEL

To arrive at a value for coal in your county, the tax department considers the location of coal, its quantity, and its quality. It relies heavily on the West Virginia Geological Survey, County Reports, and other generally accepted information dealing with coal reserves, such as the Keystone Coal Industry Manual. Using this information as a starting point, the tax department has attempted to map coal underlying the various counties. Additionally, the coal in each county is identified by seam, seam thickness, Btu content, and outcrop information.

COAL VALUATION PROCESS

As a beginning point, the tax department uses royalty rates found in leases and fee sales of coal properties in the county. Recorded data is extracted from the records of each county. An attempt is made to use recorded, arms length transactions around the time of the last tax department surface appraisal. If such are not available, the tax department may use a different time frame or, when necessary, transactions in a comparable neighboring county as a basis for its determination. In every case, only recorded information is used. Using this data, the department arrives at an average royalty rate for coal in the county. The value of coal in each particular seam is then adjusted using two factors, Btu content and seam thickness. These two factors are used primarily because of studies which indicate that they account for the most part for the value of any given coal seam. While other formulas for determining the value of coal in a given seam could be used, the tax department has concluded that the two-factor formula results in a reasonable approximation of the value of a given seam. Finally the tax department applies the value per ton of coal in the least valuable seam to the area of each parcel in a county underlying with coal using the most prevalent seam on the parcel as a guide. The resulting figure has historically indicated an economically reasonable approximation of the value of coal on the parcel. While other methods of valuation could be used, the assumptions underlying the tax department method are thought to be reasonable under the circumstances. Moreover, the tax department continually revaluates the use of this method and welcomes comments by you or other interested parties concerning it.

After arriving at the value of coal on each parcel using the above method, the tax department aggregates all parcel values to arrive at a tentative total which it believes approximates the value of coal in your county. These are the coal values which are eventually certified to you and the county commission as a guide to assessing coal in your respective counties pursuant to Code § 18-9A-11. The values so derived are then sent to the assessor, but such values are considered to be tentative since adjustments are acknowledged by the tax department to be required and are within the assessor's authority to make.

THE ROLE OF THE COUNTY ASSESSOR IN THE MINERAL VALUATION PROCESS

Upon receipt of the tentative certified values, you are requested by the tax department to notify each taxpayer whose coal has been valued as to the amount of coal charged to his parcel and the appraised value assigned thereto. Since the values provided have been calculated as if no coal has been removed, the taxpayer should provide you, in the manner you deem appropriate, with information which will help you in the appraisal process. The tax department will adjust its tentative values for the following reasons:

(a) Depletion of coal due to mining, construction or other activities.

(b) The unmineability of a seam or seams on a parcel due to geological or economic reasons.

(c) The barrenness of a coal property shown by the geological survey to contain coal, and

(d) Adjustments required by Code § 11-3-1, provisions relating to residential and farm properties.

Normally the tax department will accept adjustments recommended by the assessor related to the above factors, provided that the assessor presents reasonable evidence to support such adjustments. Maps showing mined-out areas, affidavits signed by the taxpayer, or if a corporate owner, the signature of an officer, or similar appropriate information are considered appropriate evidence. The procedures described in previous written information given to you by the tax department are appropriate and the tax department reserves the right to consider such other evidence as the assessor may recommend, provided it is deemed by the tax department to be substantial.

The following are comments relating to what constitutes mineability of property. Natural defects in coal, lack of technology in the industry and economic realities often dictate whether coal in a particular seam will be mineable. Deep coal seams of less than 28 inches thick are generally considered to be unmineable throughout the industry. Often the depth of a coal seam is such that the industry technology cannot provide a safe efficient profitable mining operation. All of these situations affect the mineability of coal. These general considerations on mineability when presented to the assessor by the taxpayer in the manner heretofore set forth may result in coal being removed from the list of taxable coal properties. You should accordingly acquire an affidavit from taxpayers to support a claim of unmineability.

West Virginia Code § 11-3-1 requires Class II property to be appraised on actual use of the property with consideration given to the amount of income the property can be expected to earn if rented. Since farms are generally listed as Class II, the coal appraisal is not compatible at first blush with this Code section. Therefore, the tentative certification should be examined to insure that Class II properties are not included.

Information received by the assessor concerning depletion, mineability and barrenness, and Class II adjustments should be provided to the tax department's Local Government Relations Division by November 1. The tax department will then adjust the tentative appraised values to reflect the change in the total value of the coal property so effected. Since corporate property returns must be submitted to the assessor by November 1 of each year [§ 11-3-12] taxpayers should be alerted that information pertaining to their coal appraisals should be submitted to you on or before November 1. As assessor, you may consider any reasonable evidence presented by the taxpayer and use any reasonable method, not contrary to law, to see that fairness and uniformity of assessments will result in the county in question. The tax department will provide advice and assistance to assessors in making determinations on depletion, mineability, barrenness, or similar errors.

Once you compile the information set forth above and deliver it, the State Tax Department will consider the information so supplied and issue the final certified values no later than January 31 of each year. Thus, in most cases assessors will be required to reach a total assessment which will in the aggregate not be less than 50% of the value of coal as certified by the tax department after adjustments. [§ 18-9A-11]

PETITION FOR RECONSIDERATION OF COAL VALUES IN A COUNTY

In rare cases, assessors will receive information which leads them to believe that the original values sent to them by the State Tax Department are substantially incorrect. Such an error might result where data used by the department in determining fair market values was inaccurate, the result of less than arms length transactions, or incomplete. In these rare cases the Department will accept from assessors written requests for reconsideration of the per acre values certified. Since West Virginia Code § 11-3-19 directs the assessor to complete the property books not later than January 31 of each assessment year, the Department will consider written requests for reconsideration on or before December 1 of each year. Any such requests should be in writing, addressed to the State Tax Commissioner, and accompanied by such information as you believe would demonstrate good cause why the per acre value as applied to a particular county is incorrect. Not all requests will result in revaluations. In fact, only in rare cases where the tax department is led to believe that its original value is the result of an error will a reconsideration be undertaken. Where the State Tax Commissioner finds that the fair market values of county coal properties are not representative of the fair market value in that county, the Local Government Relations Division of the Tax Department will recalculate coal property to reflect fair market value based upon information available to it and supplied by you. This recalculation, when deemed necessary by the State Tax Commissioner, will be completed no later than January 1.

The tax department will then be prepared to defend the valuations as provided to you after reconsideration. Such a defense shall include witnesses who will provide an explanation as to how the valuation was conducted and the data used to develop the county per acre values. Because of the personnel limitations of the department, legal representations cannot be provided to many of you.

CALENDAR OF EVENTS FOR COAL APPRAISAL

June 30	Tentative values will be provided, to include coal, on or before June 20 of each year.
November 1	Corporate property returns due. Individual coal owners should present information re: depletion, mineability and other adjustments. The tax department will consider adjustments between November 1 and December 1.
December 1	All information pertaining to adjustments should have been reviewed by assessor. Assessor may request a reconsideration of coal values. Such request shall be presented no later than December 1.
January 31	Tax commissioner will provide certified values, by class, to assessors and county commission. These final values will contain adjustments deemed necessary by assessor and/or tax commissioner.
February 1	Board of Equalization and Review will meet no later than February 1. The 50%/100% requirement shall be based upon final certified values provided on or before January 31.

VALUATION OF COAL APPRAISALS

COUNTY	APPRAISED VALUE PER ACRE	APPRAISAL FORMULA VALUE/TON	TONNAGE	THICKNESS	VALUE BASED ON LEASES	SALES
BARBOUR	$525.00	17.5¢	1500	2'	1952-75	1967-75
BERKELEY					NO COAL	
BOONE	$399.00	13.3¢	1500	2'	1961-75	1969-75
BRAXTON	$236.25	10.5¢	1500	1½'	1959-75	1971-75
BROOKE	$300.00	10 ¢	1500	2'	1951-74	1957-77
CABELL					NOT COMPLETED	
CALHOUN					NO COAL MINING NOW	
CLAY	$180.00	8 ¢	1500	1½'	1974-77	1972-76
DODDRIDGE	$ 67.50	3 ¢	1500	1½'		1971-75
FAYETTE					NOT COMPLETED	
GILMER					NOT COMPLETED	
GRANT	$315.00	14 ¢	1500	1½'	1949-76	1966-76
GREENBRIER	$315.00	14 ¢	1500	1½'	1965-74	1972-75
HAMPSHIRE					NO COAL	
HANCOCK					NOT COMPLETED	
HARDY					NO COAL	
HARRISON	$756.00	16.8¢	1500	3'	1953-75	1958-75
JACKSON					NO COAL	
JEFFERSON					NO COAL	
KANAWHA					NOT COMPLETED	
LEWIS	$488.25	21.7¢	1500	1½'	1965-75	1966-75
LINCOLN	$240.00	8 ¢	1500	2'	1968-77	1971-77
LOGAN	$270.00	12 ¢	1500	1½'	1951-75	1966-75
MARION					NOT COMPLETED	
MARSHALL	$630.00	14 ¢	1500	3'	1964-71	1962-76
MASON					NOT COMPLETED	
MERCER	$270.00	12 ¢	1500	1½'	1963-72	1966-75
MINERAL	$324.00	14.4¢	1500	1½'	1956-75	1970-75
MINGO	$360.00	16 ¢	1500	1½'	1970-74	1970-75
MONONGALIA					NOT COMPLETED	
MONROE					NO COAL	
MORGAN					NO COAL	
MC DOWELL	$390.00	13 ¢	1500	2'	1961-78	1961-77
NICHOLAS	$255.00	8.5¢	1500	2'	1952-74	1965-76
OHIO	$450.00	12 ¢	1500	2½'	1964-72	1962-74
PENDLETON					NO COAL	
PLEASANTS					NO COAL	
POCAHONTAS	$187.50	5 ¢	1500	2½'	1968	1968-76
PRESTON	$168.75	7.5¢	1500	1½'	1961-75	1963-76
PUTNAM					NOT COMPLETED	
RALEIGH	$441.00	14.7¢	1500	2'	1961-75	1966-75
RANDOLPH					NOT COMPLETED	
RITCHIE					NO COAL	
ROANE					NOT COMPLETED	

VALUATION OF COAL APPRAISALS

COUNTY	APPRAISED VALUE PER ACRE	APPRAISAL FORMULA VALUE/TON	x	TONNAGE	x	THICKNESS	VALUE BASED ON LEASES	SALES
SUMMERS	$337.50	15 ¢		1500		1½'	1971	1966-75
TAYLOR	$270.00	9 ¢		1500		2'	1930-75	1961-76
TUCKER	$225.00	10 ¢		1500		1½'	1944-63	1957-75
TYLER							NOT COMPLETED	
UPSHUR	$480.00	16 ¢		1500		2'	1949-75	1965-76
WAYNE							NOT COMPLETED	
WEBSTER							NOT COMPLETED	
WETZEL							NOT COMPLETED	
WIRT							NO COAL	
WOOD							NO COAL	
WYOMING	$390.00	13 ¢		1500		2'	1961-78	1961-78

VALUATION FORMULA FOR GAS PRODUCING LEASEHOLDS

A formidable problem that has existed for some time is the equitable valuation of the lessee's interest in gas producing leaseholds.

The value of any given gas field cannot be accurately determined without a complete geological survey. Since the cost of such a survey is prohibitive for property tax purposes, the alternative, from the standpoint of accuracy and fair treatment of individual taxpayers, is to base the valuation of the property upon the income it produces, which is the basis used for other income-producing property. This is accomplished by the capitalization of annual income.

The value of a leasehold is the estimated present worth, or market value, of the lessee's right to net income from the property, plus the lessee's interest in any improvements made by him on the property.

To estimate the value of a leasehold, the net income produced for the benefit of the lessee is capitalized into an indication of value through application of a capitalization rate.

To be considered and offset against gross income in arriving at net income are:

1. Royalty paid
2. Exploration and development costs
3. Production costs
4. Depletion and depreciation
5. Overhead and miscellaneous costs
6. Marketing costs

The capitalization rate must represent a fair return from this type investment, considering the risk involved. It must be a rate which will attract capital to this type investment and must consider other competitive investments.

A simplified method of capitalization of income is the use of a multiplier of gross income.

A multiplier of gross income is simply a modification of the capitalization of net income to estimate value. A selected multiplier can be reasonably accurate because of the relationship that can be worked out between gross receipts - expenses and net income. This method creates uniformity and maintains the valuation of this type property in line with that of other income-producing property for tax purposes.

To determine the true and actual value of gas producing leaseholds, the following formula is recommended:

> "Annual receipts (determined by using the value of the gas in the field) less royalties times three for the first four years of the productive life of the wells, and thereafter, annual receipts (determined by using the value of the gas in the field) less royalties times four."

The result obtained by the use of this formula shall include the equipment in and about the well, gathering pipelines, materials and all other tangible personal property used in producing and marketing gas from the leasehold.

The preceding formula is not intended to include transmission pipelines, inventories not contemplated for use by the producer within a reasonable period of time, vehicles, or other tangible personal property not permanently used in production.

In any case, where the use of this formula produces improper or unfair results, the assessor must try to fix a fair and equitable valuation from the use of all other information bearing on the true value of the property in question.

The true and actual value of the landlord's interest should be determined by multiplying the annual royalty receipts by four.

The use of abandoned oil and gas wells for storage purposes has come about in recent years. These abandoned wells are leased as a storage field for gas at an annual rental fee.

For valuation purposes, such property should be treated as any other income producing property. It would be valued on a capitalized earnings approach.

Multiplying the annual gross rents received by four, to arrive at the property's true and actual value, will bring the result in line with that applied to other medium quality income producing properties.

All gross multipliers suggested above are designed to arrive at true and actual value. The assessment level should be the same as that applied to other types of property.

The interest of the operator, or lessee, is a chattel real and must be assessed as personal property in Class III or IV, depending upon location.

If the landlord owns both the surface and the mineral his interest is to be assessed as a part of the real estate and is to receive the same classification as the surface.

If the landlord owns the mineral estate only, then his interest is Class III or Class IV real property, depending upon the location of the property.

EXAMPLE #1

X owns 800 acres of mineral interest including oil and gas in Gilmer County. X does not own the surface. He leases his entire mineral interest to Y who has erected two gas wells on the property. Y receives $10,000 per year from gas produced (valued at wellmouth) from each well. Y pays X a royalty of 1/8 of the value of the gas.

OWNERS ESTATE (X)

Annual royalties 1/8 x ($10,000 x 2)	$ 2,500.00
Multiplier	4
Appraisal	10,000.00
Assessment/Appraisal Ratio	.57
Assessment	5,700.00
Levy rate (Class III $2.50 per 100)	.0250
Taxes	$ 142.50

LEASEHOLD ESTATE (Y) 1st. 4 YEARS

Annual receipts less royalties ($10,000 x 2 less 2,500)	$17,500.00
Multiplier	3
Appraisal	52,500.00
Assessment/Appraisal Ratio	.56
Assessment	29,400.00
Levy rate (Class III $2.50 per 100)	.0250
Taxes	$ 735.00

LEASEHOLD ESTATE (Y) AFTER 4 YEARS

Annual receipts less royalties	$17,500.00
Multiplier	4
Appraisal	68,000.00
Assessment/Appraisal Ratio	.56
Assessment	38,080.00
Levy rate (Class III $2.50 per 100)	.0250
Taxes	$ 952.00

EXAMPLE #2

C owns a farm in County X in fee under which lie extensive oil and gas reserves. C has leased a portion of these reserves to D from which C is paid a royalty by D equivalent to 1/8 of the value of gas at the wellmouth. Annual receipts from gas production are $25,000. The assessment ratio is 50% and the levy rate is 39¢ per $100 valuation.

OWNERS ESTATE (C) (FEE)

Appraised value of surface		$30,000.00
Annual royalties	$3,125.00	
Annual royalties capitalized (3,125 x 4)		12,500.00
Total appraised value		42,500.00
Assessment/Appraisal Ratio		.50
Assessment		21,250.00
Levy rate (Class II $1.43 per 100)		.0143
Taxes		$ 303.87

LEASEHOLD ESTATE (D) 1st. 4 YEARS

Annual receipts less royalties ($25,000 less 3,125)	$21,875.00
Multiplier	3
Appraisal	65,625.00
Assessment/Appraisal Ratio	.50
Assessment	32,812.00
Levy rate (Class III $2.50 per 100)	.0250
Taxes	$ 820.50

LEASEHOLD ESTATE (D) AFTER 4 YEARS

Annual receipts less royalties	$21,875.00
Multiplier	4
Appraisal	87,500.00
Assessment/Appraisal Ratio	.50
Assessment	43,750.00
Levy rate (Class III $2.50 per 100)	.0250
Taxes	$ 1,093.75

EXAMPLE #3

C leases 100 acres of oil and gas rights on a fee tract not used as a residence to an undisclosed producer and reports annual royalties received to assessor as $3,000. The market value of the tract prior to production was established at $12,000. The annual net receipts for gas produced on the property are not available. Undeveloped oil and gas is valued at $5 per acre in the county.

(From this information, an assessor may determine the owner's interest but will be unable to calculate the lessee's interest.)

OWNERS ESTATE (C)

Appraised value of surface ($12,000 less 500)		$11,500.00
Annual royalties	$3,000.00	
Annual royalties capitalized (3,000 x 4)		12,000.00
Total appraised value		23,500.00
Assessment/Appraisal Ratio		.50
Assessment		12,000.00
Levy rate (Class III $2.50 per 100)		.0250
Taxes		$ 300.00

NOTE:

Since the value of a nonproducing fee tract of land containing oil and gas minerals is valued by determining the market value of the surface and adding a nominal value for mineral interests, the market value prior to production less the amount attributable to the undeveloped mineral interest may be used to obtain the value of the surface. Capitalized royalties are then added to the surface value to determine the total value of the owner's estate.

ASSESSMENT OF TIMBER

Forest land, prior to the felling of the timber, is assessed as real estate. The value of the timber should be combined with the value of the surface in arriving at a total assessed valuation for the land as a whole.

This type property is usually classified as Class II or Class III.

Generally, timberlands used in connection with farms are Class II property. However, if timber is in a tract of sufficient size to have commercial value, and farmed as such, it is Class III property.

Forest land is usually considered as commercial timber if it will cut 3M board feet, or more, per acre and measures 12 inches, or more, at a point 12 inches above the ground on the high side.

Assessors are advised to value such standing timber at its true and actual value per 1M board feet. The operators should submit annual depletion reports to the assessor so the valuation can be adjusted each assessment year.

VALUATION FORMULA FOR OIL PRODUCING LEASEHOLDS

The true and actual value, for tax purposes, of each interest in a developed oil leasehold should be established through these procedures:

1. Ascertain the average daily production in barrels for the twelve-month period ending June 30th.

2. Determine the average daily production in barrels applied to royalty and multiply by $1,000 to value the lessor's interest.

3. Determine the average daily production in barrels applied to working interest and multiply by $1,000 to value the lessee's interest.

CLASSIFICATION
AND EXEMPTIONS

DEFINITIONS

"OWNER" - shall mean the person who is possessed of the freehold, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability shall be deemed the owner until the mortgagee or trustee takes possession, after which such mortgagee or trustee shall be deemed the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before transfer of legal title, shall also be deemed the owner.

"USED AND OCCUPIED BY THE OWNER THEREOF EXCLUSIVELY FOR RESIDENTIAL PURPOSES" - shall mean actual habitation by the owner as a place of abode to the exclusion of any commercial use. If a license is required for an activity on the premises, or if an activity is conducted thereon which involves the use of equipment of a character not commonly employed solely for domestic, as distinguished from commercial, purposes, the use shall not be construed to be exclusively residential.

"FARM" - shall mean a tract or contiguous tracts of land used for agriculture, horticulture or grazing.

"OCCUPIED AND CULTIVATED" - shall mean subjected as a unit to farm purposes, whether used for habitation or not, and although parts may be lying fallow, in timber or in wastelands.

"BONA FIDE TENANT" - shall mean any person or persons to whom a farm or tract of land is rented or leased for agricultural, horticultural or grazing purposes, and it matters not whether the tenant is to pay rental in the form of cash, shares or services rendered independently of or related to the leased farm.

"ANY OTHER INTANGIBLE PERSONAL PROPERTY" - shall be construed to mean other evidences of indebtedness.

CLASSIFICATION OF PROPERTY

All property shall be classified according to its status as of the first day of the assessment year (July 1st) as follows: [§ 11-8-5]

Class I - All tangible personal property employed exclusively in agriculture, including horticulture and grazing;
All products of agriculture (including livestock) while owned by the producer;
All notes, bonds, bills and accounts receivable, stocks and any other intangible personal property;

Class II - All property owned, used and occupied by the owner exclusively for residential purposes;
All farms, including land used for horticulture and grazing, occupied and cultivated by their owners or bona fide tenants;

Class III - All real and personal property situated outside of municipalities, exclusive of Classes I and II;

Class IV - All real and personal property situated inside of municipalities, exclusive of Classes I and II.

EXAMPLES OF CLASSIFICATION

The examples relating to classification of property given below are those most often encountered in the everyday operation of the assessor's office. Any difficult or unusual questions arising should be submitted to the State Tax Commissioner, with all pertinent information, for his opinion.

Most of these examples have Code references. The examples without Code or letter references are recommended to be used as a guide by the tax department.

"FORMER RENTER BUYS RESIDENCE BUT SELLER RETAINS LAND"

This means that in the case of a former company town, or any similar situation, where former renters are buying the residence but the seller retains possession of the land, such homes should be classified as CLASS II - PERSONAL PROPERTY. [§ 11-3-7]

"MOBILE HOMES"

The same applies to mobile homes, even if they are located in a trailer park. If such trailers are owned and used exclusively for residential purposes by the owner they are entitled to the CLASS II - PERSONAL PROPERTY classification. [§ 11-8-5, §§ 11-5-11, 11-5-12]

"TRAVEL TRAILERS AND CAMPERS"

Travel trailers and campers are not considered mobile homes and are not entitled to be placed in Class II. They are taxed as PERSONAL PROPERTY and are CLASS III or CLASS IV. [§ 11-8-5]

"MOBILE HOMES AS REAL PROPERTY"

Normally, if the owner of a mobile home, who also owns the land on which it sits, places it on a constructed foundation and builds steps, a patio or etc., the mobile home is considered to be in a permanent location and should be ASSESSED AS REAL PROPERTY. [§ 11-8-5, §§ 11-5-11, 11-5-12]

"OWNER-OPERATOR OF MOTEL OCCUPIES ROOM"

If the owner-operator of a motel occupies one or more rooms of the motel structure and the remaining rooms are rented in the normal conduct of the motel business, NO PORTION OF THE PROPERTY IS ENTITLED TO CLASS II classification. [§ 11-8-5]

"ONE LOT WITH MOTEL AND RESIDENCE"

If the owner-operator of a motel owns one lot which has the motel structure on it plus a separate and distinct additional building which is occupied as a residence, THE COUNTY COMMISSION CAN MAKE A DIVISION OF THE PROPERTY AND PLACE THE RESIDENCE BUILDING IN CLASS II. [§ 11-8-5, § 11-4-18[

"DUPLEX OWNED BY SEPARATE INDIVIDUALS"

When a duplex is owned by two different people, with separate deeds, and each owner occupies his own half for residential purposes, each of the "residences" would be ASSESSED TO THEIR OWNER AS CLASS II PROPERTY.

"DUPLEX IS RESIDENCE AND RENTED"

When a duplex is owned by one owner who lives in one half and rents the other half, the owner does not occuply the property exclusively for residential purposes and it would therefore, be ASSESSED AS CLASS III OR IV PROPERTY, depending upon location, UNLESS A DIVISION OF THE PROPERTY, INCLUDING LAND, IS MADE BY THE COUNTY COMMISSION. [§ 11-8-5, § 11-4-18]

"HOUSE REMODELED TO SERVE AS SEPARATE APARTMENTS"

A house not originally constructed as a duplex but remodeled to serve as two separate apartments, one of which is occupied as a residence by the owner, the other being rented, would be assessed as either CLASS III OR CLASS IV PROPERTY, depending upon location.

Since a single structure cannot be split for assessment purposes, THIS PROPERTY WOULD NOT QUALIFY FOR DIVISION by the county commission for assessment purposes UNLESS THE DIVISION IS SUCH THAT A CONVEYANCE COULD BE MADE OF EACH PORTION, INCLUDING LAND. (Letter dated November 1, 1965, W. W. Bowyer, Director)

"SUMMER HOMES, OR CAMPS OCCUPIED BY OWNERS"

Summer homes, or camps, OCCUPIED EXCLUSIVELY by the owners are entitled to CLASS II CLASSIFICATION. If such homes, or camps, are rented for any part of the year, they must be placed in the higher classification. [§ 11-8-5] (See also, 51 Ops. Attorney General 128)

"TOURIST HOMES"

Tourist homes are required to obtain a license for the conduct of business. Consequently, THEY ARE NOT ENTITLED TO THE CLASS II CLASSIFICATION. [§ 11-8-5]

"DAIRY OPERATED IN CONNECTION WITH FARM"

A dairy, operated in connection with a farm which is actually cultivated and used as a farm, is entitled to CLASS II CLASSIFICATION. Where dairies are strictly commercial, and no farming operations are conducted on the property, they are to be placed in the higher classification. [§ 11-8-5, § 11-5-3]

"VACANT HOUSES"

The status of property on July 1 determines classification. Vacant houses should ordinarily be placed in the higher classification. However, care must be taken in those instances where the owner may only use the house during a part of the year. If the owner on July 1 uses the property as his home, if only part of the year, Class II would be appropriate. Should it be rented during a part of the year, Class II would not apply. [§ 11-8-5]

"VACANT LOTS"

Vacant lots within a municipality, not adjacent to or used in connection with the residential property of the owner, should be placed in CLASS IV. [§ 11-8-5]

"INHERITED PROPERTY OCCUPIED BY HEIRS"

When inherited property is actually occupied by one of the heirs exclusively for residential purposes it is entitled to CLASS II CLASSIFICATION pending final disposition of the property.

"PROPERTY PARTIALLY OCCUPIED AND PARTIALLY RENTED"

An all inclusive rule with respect to the classification of residential property partially occupied by the owner and partially rented is difficult to adopt. Each case must be decided upon its peculiar set of circumstances.

When a building is designed, or altered, to accommodate more than one family, each family having a separate and distinct kitchen, dining room and so on, the property should be placed in the higher classification unless all occupants are at the same time owners of the property. [§ 11-8-5]

"RENTING OF ROOMS IN RESIDENTIAL PROPERTY"

If an owner of residential property retains only one or two rooms for his use and rents the remainder of the house, THE PROPERTY IS NOT ENTITLED TO BE PLACED IN CLASS II. [§ 11-8-5]

"RESIDENTIAL PROPERTIES OWNED BY COMMERCIAL ESTABLISHMENTS"

Residential properties owned by banks, buildings and loan associations, or any other firm are NOT ENTITLED TO BE PLACED IN CLASS II. [§ 11-8-5]

"BUILDING USED AS RESIDENCE AND COMMERCIAL ESTABLISHMENT"

When one building is used by the owner as a residence and store, or business of any kind, IT IS NOT ENTITLED TO CLASS II CLASSIFICATION. [§ 11-8-5]

"LOTS HELD OR DIVIDED FOR SPECULATIVE PURPOSES"

When a tract of land is divided into lots for speculative purposes, or lots are purchased and held for speculative purposes, THEY ARE NOT ENTITLED TO BE PLACED IN CLASS II. [§ 11-8-5]

"CLASSIFICATION OF TIMBER LANDS"

Timber land used in connection with the operation of a farm is entitled to Class II classification. Large tracts of cut-over land and timber lands not used in connection with the operation of a farm are not entitled to be placed in Class II. [§ 11-8-5, §11-5-3]

Timber rights are considered to be real estate until the timber is severed. The proper classification is Class III or Class IV, depending upon location. [§ 11-4-9]

"OWNERSHIP OF MORE THAN ONE RESIDENTIAL PROPERTY"

Where a person owns two residential properties not on the same lot and occupies one as a home and the other is occupied by any other person(s), ONLY THE ONE IN WHICH HE RESIDES IS ENTITLED TO CLASS II CLASSIFICATION. [§ 11-8-5]

"TWO RESIDENTIAL PROPERTIES ON SAME LOT"

Where the owner of one lot has two houses thereon, one of which he occupies as a home and the other which he rents, IN ORDER TO OBTAIN THE BENEFIT OF CLASS II CLASSIFICATION FOR THE ONE HE OCCUPIES IT IS NECESSARY TO HAVE A DIVISION OF THE PROPERTY MADE BY THE COUNTY COMMISSION. [§ 11-8-5, § 11-4-18]

"RESIDENTIAL PROPERTY AND COMMERCIAL PROPERTY ON SAME LOT"

When a business property and a residence property are on the same lot, THE RESIDENCE CANNOT BE PLACED IN CLASS II UNLESS A DIVISION OF THE PROPERTY IS MADE BY THE COUNTY COMMISSION. [§ 11-8-5, § 11-4-18]

"IS A CONDITIONAL SALES CONTRACT TAXABLE?"

No, a conditional sales contract is not taxable. However, a note, security agreement or the obligation to pay under the contract is taxable as intangible personal property. [§ 11-8-5]

The same logic applies whether it is for the sale of real estate or personal property. (Letter dated August 20, 1973, John R. Melton, Director LGR)

"WHAT IS THE TAX STATUS OF MILITARY PERSONNEL WHO ARE PRESENTLY ON ACTIVE DUTY?"

Chapter 11 of the West Virginia Code does not exempt any military personnel from property taxes; however, the Soldiers & Sailors Relief Act of 1940, 50 USCA§574, is interpreted as saying that any military personnel residing in the State of West Virginia, who do not have a legal domicile in another state, or who do not pay personal property taxes in said domicile, are not exempt from West Virginia property taxes.

Also, a West Virginia resident stationed elsewhere, who does not pay personal property taxes in the other jurisdiction, is usually liable for West Virginia personal property taxes.

Naturally if the individual in question owns real estate in West Virginia, regardless of his legal domicile whether he lives on or off base, he is still liable for all county real estate taxes. (Letter dated January 7, 1974, John R. Melton, Director LGR)

"WHAT IS THE TAX STATUS OF A DISABLED VETERAN?"

No section of the Code of West Virginia exempts a disabled veteran from taxes of any kind. (Letter dated January 31, 1974, Richard L. Dailey, State Tax Commissioner)

"HOW SHOULD JUNK YARDS BE ASSESSED? SHOULD EACH CAR BE ASSESSED SEPARATELY OR SHOULD THEY BE ASSESSED TOGETHER AS INVENTORY?"

Vehicles that are located in a junk yard or scrap yard are assessed as inventory with a fifty ($50.00) dollar value per unit. (Letter dated September 28, 1973, John R. Melton, Director LGR)

"DOES A TAXPAYER WHO FILES A RETURN RECEIVE PREFERABLE TREATMENT?"

If a person owns an automobile or has entered into a signed contract to purchase an automobile on July 1, 19xx he is liable for county personal property taxes for the coming calendar year. It is the responsibility of each taxpayer to file a personal property tax return with the assessor's office and for those individuals that have not complied with the law an assessment can be made by the assessor's office. [§§ 11-3-1, 11-3-2]

For those individuals that have a supplemental tax ticket made, not only can they be assessed but a 6% penalty can also be levied to the taxpayer. (Letter dated September 28, 1973, John R. Melton, Director LGR)

"IS IT THE RESPONSIBILITY OF THE ASSESSOR'S OFFICE OR SHERIFF'S OFFICE TO GIVE OWNERS OF AUTOMOBILES SIGNED RECEIPTS FOR SAID VEHICLES?"

Code § 17A-3-3a in part reads "it shall be the duty of the assessor and sheriff, respectively, to see that the assessment records and the receipts contain information adequately identifying the vehicle as registered under the provisions of this chapter. The officer receiving payment shall sign each receipt in his own handwriting."

Therefore it is the interpretation of this law that only the sheriff's office may issue tax receipts since all tax money on automobiles are collected by that office and it would be a violation of Code § 17A-3-3a for the assessor's office to issue a receipt because it did not receive payment for the taxes owed. (Letter dated August 28, 1973, J. Michael Earley, LGR)

"IS STOCK OF CORPORATIONS OUTSIDE OF THE U.S.A. SUBJECT TO AD VALOREM TAXATION IN WEST VIRGINIA AS CLASS I PERSONAL PROPERTY?"

Common stock and preferred stock of corporations having no tangible property in the United States is taxable to the owner of the stock as Class I personal property.

Code § 11-5-3 defines personal property, among other things, as: ". . . all notes, bonds, and accounts receivable, stocks and other intangible property. . ."

Code § 11-5-1 as to taxable personal property reads in part: ". . . but the 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. . ."

Code § 11-5-6 as to domestic corporations reads: ". . . when the property, stock or capital of any company, whether incorporated or not, is assessed to such company, no person owning any share, portion or interest therein, shall be required to list the same or be assessed with the valuation thereof. . ."

This series of three Code sections illustrates the fact that:

1. although all stock is initially presumed taxable:
2. stock in companies whose tangible property lies in other states and is taxed in other states will not be taxed on their stock, thus giving rise to a double property taxation;
3. when the tangible property of a corporation is located in West Virginia, stock of the corporation will not be taxed to the shareholder, thus leading to a similar double taxation.

This is part of the U. S. Constitutional guarantee of full faith and credit of one state for another state's law.

No such full faith and credit guarantee extends to governments outside the United States, therefore, since the general law says that all stocks are taxable and only in the two exceptional instances are stocks rendered not taxable. Common stock and preferred stock in non-U. S. corporations are taxable to the shareholder as intangible personal property. (Letter dated January 8, 1974, John R. Melton, Director LGR)

"OBTAINING A DIVISION OF PROPERTY FOR CLASSIFICATION PURPOSES"

A property owner must make application to the county commission in order to obtain a division of property for classification purposes.

The county commission upon the request of the owner may divide, or consolidate, any tracts or lots for the purpose of entry upon the land books. This applies solely to the segregation of real property.

No such division can be made unless there is, in actual fact, a distinction in use, and unless the division requested is one which the owner could make for the separate conveyance of each of the portions divided.

In no event can any single structure be divided and only contiguous tracts or lots can be consolidated.

In every case of consolidation, or division, the order, signed by the president of the county commission, shall describe the properties so they can be clearly identified. Such order is required to be recorded in the county commission's office as required by Code § 39-1-13a.

A certified copy of the order must be presented to the assessor who shall make the proper adjustment on the land book for the following assessment year.

This is provided for in Code §§ 11-4-17 and 11-4-18.

PROPERTY EXEMPT FROM TAXATION

The State Constitution, Article X, Section 1, empowers the Legislature to exempt certain property from taxation. This authority is exercised through the provisions contained in Chapter 11, Article 3, Section 6, of the West Virginia Code.

The courts have consistently held that exemption from property taxation is limited by the constitutional provision that certain properties may be exempt only if USED for certain purposes. This is confirmed by legislative intent in the last sentence of the Code § 11-3-9, relating to property exempt from taxation which reads:

> "Notwithstanding any other provisions of this section, however, no language herein shall be construed to exempt from taxation any property owned by or held in trust for educational, literary, scientific, religious or other charitable organizations or corporations, unless such property is used primarily and immediately for the purposes of such corporations or organization".

Five basic rules must be considered in reviewing qualification for property tax exemption:

1. All property is presumed to be taxable.
2. Tax exemption is the exception.
3. The burden of proving exemption is on the person seeking exemption.
4. Any doubts that arise must be decided against exemption.
5. Exemptions are strictly construed.

Certain types of property have been regularly deemed exempt from property tax when in fact these properties are subject to taxation. The holding in Central Realty Co. v. Martin, 125 W. Va. 915, 30 S.E. 2nd 720 (1944) revolutionalized traditional concepts of exemption by stating that real estate owned by educational and charitable organizations but leased for private purposes is not exempt even though the rental income is applied to charitable and benevolent purposes and upkeep of the properties premises.

Improved and unimproved real estate owned by schools; literary organizations, benevolent associations, such as the Masons, the Elks, Veterans of Foreign Wars and so forth; and charitable organizations should not be granted exemption unless the use of the property is closely scrutinized and is determined to be utilized for an approved purpose.

Organizations claiming a tax exempt status because they have been deemed bona fide nonprofit corporations by the Internal Revenue Service present particular problems to the assessor. A designation as a nonprofit corporation by the IRS does not in and of itself result in a property tax exemption similarly being granted to the organization. Such entities must prove to the satisfaction of the assessor that the property for which a tax exempt status is claimed is in fact used for educational, literary, scientific, religious or charitable purposes.

Hospitals and corporations organized to provide for the elderly may be deemed exempt under certain circumstances. Generally, such organizations have received a "nonprofit" designation by the Internal Revenue Service. The test to be applied to both types of property is whether or not it is held or leased out for profit. The courts have stated that where a hospital devotes all proceeds arising from its operation to its maintenance and support and where deficits caused by expenses in excess of receipts are paid by voluntary contributions, and no profit is sought or received by its/their owners, property owned by that hospital is exempt from taxation as a charitable organization. Likewise, any exemption granted to low income housing for the elderly, whether or not such housing is sponsored and owned by a religious or nonprofit organization or association, must conform to the court's interpretation of the term "not held or leased for profit."

Factors to be considered in any determination include, but are not limited to, the following:

1. The purpose of the organization as set forth in its charter, articles of incorporation or partnership;

2. The activities or services being offered on the premises of the property;

3. The availability to the general public of the services or activities offered by the organization or and in the particular property being considered;

4. The presence or absence of rental income obtained from private organizations or persons for use of the property;

5. Where an exemption for charitable uses is claimed the amount of fees or other charges instituted for participation in the services or activities offered; and

6. The sources of income used to operate and maintain the property on a "nonprofit" basis share deficits caused by expenses exceed receipts.

If the assessor rules a property taxable and the owner takes exception, the procedure for appeal is outlined in the Code § 11-3-24a, which provides for certification of the question to the tax commissioner for an opinion.

References: West Virginia Constitution, Article X, Section 1; Code § 11-3-9; § 11-3-24a;

State ex rel County Court v. Demus; 148 W. Va. 398, 135 S.E. 2d 352 (1964);

In re Hillcrest Memorial Gardens, Inc. 146, W. Va. 337, 119 S.E. 2d 753 (1961);

Central Realty Company v. Martin, 126, W. Va. 915 30 S.E. 2d 720 (1944);

State ex rel Farr v. Martin, 105 W. Va. 600, 143 S.E. 356 (1928);

Reynolds Memorial Hospital v. County Court, 78 W. Va. 685, 90 S.E. 238 (1916)

ILLUSTRATIONS OF PROPERTY EXEMPTED FROM TAXATION

BONDS AND OTHER EVIDENCE OF INDEBTEDNESS

All bonds and other securities issued by the federal government or instrumentality thereof are exempt from taxation as personal property belonging to the United States.

Reference: Code § 11-3-9

Bonds or other securities issued by the State of West Virginia or any subdivision thereof, including municipalities, constitute personal property of the State and as such are exempt from taxation.

References: Code § 11-3-9; § 13-1-33

Some examples of exempt bonds are:

1. West Virginia Housing Authority Bonds
   Reference: Code § 16-15-14

2. Industrial Development Authority
   Reference: Code § 13-2C-15

3. Airport Authority Revenue Bonds
   Reference: Code § 13-2A-12

4. Municipal Waterworks Systems Revenue Bonds
   Reference: Code § 8-19-4

5. Municipal and Public Service District Sewage System Revenue Bonds
   Reference: Code § 16-13-10

6. Combined Waterworks and Sewage System Revenue Bonds
   Reference: Code § 8-20-5

Mortgage, bonds and other evidence of indebtedness sold by churches and religious societies to erect church buildings used exclusively in divine worship are exempt from taxation. Evidence of indebtedness not sold by churches and religious societies remains taxable. The term "evidence of indebtedness" has been interpreted by the courts to consist of debts claimed as deductions from the aggregate of personal assets.

References: Code § 11-3-9; § 11-5-1

Union Mortgage Investment Co. v. Fox, 115 W. Va. 219, 175 st 217 (1934);

George Washington Life Insurance Co. v. Board of Review, 113 W. Va. 664, 169 S.E. 532 (1933)

Investment share accounts in savings and loan institutions may be deducted from total assets of savings and loan institutions.

References: Code § 11-3-14a

State ex rel Harris v. McCorkle, 146 W. Va. 946, 123 S.E. 2d 888 (1962)

CEMETERIES

Private and public owned cemeteries are exempt from taxation. Cemetery property held in reserve for future burial purposes is also exempt, provided the amount of property is not disproportionate to the population of the area to be served. However, this exemption does not apply to office furniture and equipment used for corporate purposes.

References: West Virginia Constitution, Article X, Chapter 1; Code § 11-3-9; Mountain View Cemetery Co. v. Massey, 109 W. Va. 473 (1930)

Hillcrest Memorial Gardens, 146 W. Va. 337 (1961); 48 OPS attorney general 114 (1959)

CHURCH PROPERTY

Property used exclusively for divine worship is exempt from taxation. However, mere ownership of property by a church or church trustees does not assure such property of tax exemption unless the property is exclusively so used.

Real estate used exclusively for divine worship may be exempt from taxation although legal title is in the name of an individual.

Rectories, parsonages and the like are exempt. Mineral estates owned by religious organizations are ordinarily not entitled to an exemption since the estate cannot be used directly for religious purposes.

References: West Virginia Constitution, Article X, Chapter 1; Code § 11-3-9; Central Realty Co. v. Martin, 126 W. Va. 915 (1944)

CORPORATE STOCK

Shares of common stock of a corporation, owned by individuals, are exempt from taxation regardless of whether the corporation is located within or without the State if the corporation is taxed at its source. This is because common stock represents equity ownership in the corporation property which is taxed to the corporation. However, preferred stock, which is a debt of the corporation, is taxed to the individual.

Shares held in mutual funds are exempt for the same reason. The exception would be any proportion of the shares representing taxable bonds, or other evidences of debt, upon which a property tax has not been paid.

The intent of this exemption is to avoid double taxation.

HOMESTEAD RELIEF ACT

In 1972, the West Virginia Legislature enacted the Homestead Relief Act, West Virginia Code § 11-25-1 et seq., commonly referred to as the "circuit breaker" legislation, to provide general tax relief for the low-income elderly.

Persons of 65 years of age or older may offset a certain portion of their annual property tax or rent payments against their "gross household income" as that term is defined in Code § 11-25-2. Income tax and property tax are remitted to the appropriate state or county agency. A claim for relief may then be submitted to the State Tax Department on a form prepared by that agency. The tax department also has prepared a table upon which all computations of claims are to be computed.

In order for an individual to file a claim, he or she must be 65 years of age or older, domiciled in the State during any portion of the calendar year preceeding the year in which the claimant reached the specified age, and whose income did not exceed $5,000 during the calendar year preceeding the year in which he is eligible to file a claim for relief.

All claims under the Homestead Relief Act are to be submitted between July 1st and September 30th of the year following the period of the claim. For example, claims for relief for calendar year 1979 should be filed from July 1, 1980 through September 30, 1980.

The Homestead Relief program should not be confused with the Homestead Exemption program. Although both forms of tax relief are available to qualified persons, the homestead relief claim form must be filed with the State while the homestead exemption application must be submitted to the county assessor.

HOMESTEAD EXEMPTION

This statutory provision is designed to provide assessment relief to qualified homeowners. Persons 65 years of age or older, or who will become 65 on or before June 30 following the July 1 assessment day may qualify for a $5,000 exemption of assessed value. The person must own and occupy the property as their primary residence. Persons owning a life estate or consummate dower interest in property, and occupy it as their primary residence are also entitled to the exemption, provided the age requirement has been met.

References: West Virginia Constitution, Article X, Chapter 1b; Code § 11-4-21

HOSPITALS

Since all hospitals are not exempt from taxation, the test to be applied is whether the property is being used for charitable purposes and not held or leased out for profit.

A hospital not held or leased out for profit that provides the same medical care for all patients regardless of their ability to pay; which devotes all of its proceeds to its maintenance and support; where deficits caused by expenses in excess of receipts are paid by voluntary contributions; and, no profit is received by its owners, is property used for charitable purposes and therefore exempt.

References: West Virginia Constitution, Article X, Chapter 1; Code § 11-3-9; Reynolds Memorial Hospital v. County Court, 78 WV 685 (1916)
cross reference see page 8-14 of manual.

INDUSTRIAL DEVELOPMENT BOND ACT

Real and personal property owned by a county or municipality leased to an industrial plant constructed or acquired pursuant to the provisions of the Industrial Development Bond Act, Chapter 13, Article 2C, Section 1 et seq. of the West Virginia Code as amended is exempt pursuant to Code § 13-2C-15.

INVESTMENTS

Shares of capital stock owned by residents of this State in corporation actually located in another state are exempt from taxation.

References: Code § 11-5-1; cross reference page 4-12 of manual

Bank deposits and money are exempt from taxation. The term "money" includes but is not limited to checks, cashiers checks, certified checks, postal money orders and express checks. Bank deposits include savings and time deposits in a commercial bank as well as investment share accounts with savings and loan institutions.

References: West Virginia Constitution, Article X, Section 1a; Code § 11-3-9; Code § 11-5-10a; 48 Op. Attorney General 63 (1959); State ex rel Harris v. MacCorkle; 146 W. Va. 246, 123 S.E. 2nd 888 (1962); Code § 11-3-14a.

Annuities belonging to or held in trust for college, seminaries, academies and free schools, the proceeds of which are devoted to educational, literary, or scientific purposes are exempt.

References: Code § 11-3-9

PROPERTY USED FOR SOCIAL PURPOSES

Property used by benevolent or charitable organizations for social purposes primarily, in which they operate a club to be enjoyed by the members and their guests, is not used within the prescribed exemption requirement because the property is not primary and immediate for charitable purposes.

References: West Virginia Constitution, Article X, Section 1; Code § 11-3-9

STUDENTS CLUBHOUSE OR DORMITORY FRATERNITIES & SORORITIES

A clubhouse or dormitory furnished by a college for the use of all its students at a nominal fee and used exclusively by students for recreational and social purposes and various student meetings of the institution is usually exempt from taxation.

This is true even though there may be a charge for room rent, meals and membership, as long as such charges are not made with the intent of making a profit.

Property owned by a national social fraternity, or sorority, with chapters located at numerous colleges and universities throughout the United States does not qualify for exempt status.

This is because the property's primary use is for social purposes, for the enjoyment of its members, and not for educational, literary, scientific, religious or charitable purposes.

References: West Virginia Constitution, Article X, Chapter 1; Code § 11-3-9

OPINION FROM THE OFFICE OF THE ATTORNEY GENERAL

"Does a forfeiture arise with regard to the assessment of unsurveyed land which has not had all its acreage entered in the appropriate county's land books for taxation.***

"Most of these situations involve an assessment that has been listed, valued, and taxed in the land books for the years in question, with the tax description setting forth the number of acres. The land is subsequently surveyed, and additional acreage is discovered to be associated with the assessment.***

"Has the additional acreage forfeited to the State for nonentry, since it has not been listed and taxed in the land books for five or more years?"

Forfeiture of land for nonentry and nonpayment of taxes thereon is provided for in Article XIII, Section 6 of the Constitution of West Virginia which provides, in part, as follows:

> "it shall be the duty of every owner of land, or of an undivided interest therein, to have such land, or such undivided interest therein, entered on the land books of the county in which it, or a part of it, is situated, and to cause himself to be charged with taxes legally levied thereon and pay the same. When, for any five successive years, the owner of any tract of land, or undivided interest therein, shall not have been charged on such land books with state, county and district taxes thereon, then, by operation hereof, the land, or undivided interest therein, shall be forfeited, and title vested in the State."

Pursuant to this constitutional provision, the Legislature passed Chapter 11A, Article 4, Section 2, West Virginia Code, 1931, as amended, which reads as follows:

> "It is the duty of the owner of land to have his land entered for taxation on the land books of the appropriate county, have himself charged with the taxes due thereon, and pay the same. Land which for any five successive years shall not have been so entered and charged shall by operation of law, without any proceedings therefor, be forfeited to the State as provided in section 6, article XIII of the Constitution, and shall thereafter be subject to transfer or sale under the provisions of sections 3 and 4 of such article."

Thus, the law in this State clearly imposes a duty on the landowner to have his land entered for taxation on the land books, have himself charged with taxes, and to pay the same. Any land which has not been entered and charged with for five successive years becomes forfeited by operation of law and title thereto becomes vested in the State.

The precise question posed is whether or not in a situation where the landowner has his property entered for taxation on the land books as 75 acres, for example, and is charged with and pays taxes on that assessment for five or more years, and a later survey reveals that the parcel of land actually contains 100 acres, there is a resulting forfeiture for nonentry of the additional 25 acres under the constitutional and statutory provisions as set forth above.

This question has been addressed by the West Virginia Supreme Court of Appeals on more than one occasion. In the leading case of State v. Cheney, 45 W. Va. 478, 31 S.E. 920 (1898) Syllabus point 2 thereof reads as follows:

> "Where a patent is for a tract of land of a given number of acres, and it is entered for taxes accordingly, the fact that the traet (sic) contains a greater quantity will not forfeit the whole or the excess for nonetry (sic) for taxation, under Chapter 125, Acts 1869, or section 6, Article XIII, of the Constitution. (p. 482)."

In the body of the opinion at page 482 thereof, the Court further stated as follows:

> "It cannot be that if a patent calls for five thousand acres, but its boundaries include six thousand any of it is forfeited. It is the tract entered, not acres."

Again, in the case of The White Flame Coal Company v. Emma Burgess, et al., 86 W. Va. 16, 102 S.E. 690 (1920), our Supreme Court of Appeals reaffirmed its earlier holding in State v. Cheney, supra, and at page 23 of the opinion said:

> "A claim of forfeiture is asserted on the bare fact that the acreage taxed as minerals is too small, or that there is an excess of acreage owned above the acreage taxed. This claim is equally unfounded. The Bruens caused their coal to be assessed as a single tract, agreeably to the fact. In the taxation thereof, there was an error as to the quantity. In such case, there is no failure to enter the tract of land or any part thereof for taxation, within the meaning of the law. State v. Cheney, 45 W. Va. 478; Desty, Tax. 567.
>
> Under our tax laws, the subject of taxation, except in the case of a city or town lot, is the tract, not the acres composing it. If the error is an excess in quantity, the public benefits by it. The State gets more than belongs to it. If the error is one of deficiency, there is no doubt either an actual or potential remedy by back-taxation, wherefore the State suffers no serious injury in that event. There is absolutely no authority for the proposition that there is a forfeiture in either case, and it is utterly untenable from any point of view."

In the enactment of Code § 11A-4-39a, these court rulings were essentially codified by the West Virginia Legislature. This statute provides that no land book entry which may be considered to be erroneous in various particulars, including a deficiency in area, will constitute a forfeiture if the identity of the land intended by such entry can be ascertained.

Therefore, it is the opinion of this office that where land is entered on the land books of the appropriate county and charged with taxes for five or more years and such entry is later found to be deficient in acreage, there is no resulting forfeiture of any part of the land which is the subject of the assessment including such additional acreage, provided the identity of the land embraced by such entry can be ascertained.

TAXABILITY RULINGS OF THE STATE TAX COMMISSIONER

ISSUED UNDER THE PROVISIONS OF CODE § 11-3-24a

West Virginia Code § 11-3-24a outlines procedures to be followed where the taxpayer and county assessor disagree as to whether property is subject to taxation. Under provisions of that section, the county assessor is to request a ruling by the tax commissioner as to the taxability of the property in question. The tax commissioner has until February 28 of the assessment period to render his decision. This decision may be appealed by the assessor or the taxpayer to the Circuit Court within thirty days of the date of such an opinion.

* * * * * * * * * * * *

TAXABILITY RULING OF THE STATE TAX COMMISSIONER

ASSESSOR: MR. DENNIS BROWNING - LINCOLN COUNTY

SUBJECT: TAXABILITY OF APPROXIMATELY 135,000 ACRES OF REAL PROPERTY OWNED BY COLUMBIA GAS TRANSMISSION CORPORATION IN LINCOLN COUNTY.

Pursuant to the provisions of West Virginia Code § 11-3-24a a taxpayer may apply to the assessor for information regarding classification and taxability of his property at any time after the property is returned for taxation and up to and including the time the property books are before the county commission for equalization and review. If the taxpayer is dissatisfied with the ruling made by the assessor, he may file his objection in writing to the assessor. Either the taxpayer or the assessor may certify the question of classification or taxability to the tax commissioner.

QUESTION TO BE DECIDED:

ARE THE MINERALS INCLUDING COAL OWNED BY COLUMBIA GAS TRANSMISSION CORPORATION AND LOCATED ON THE SAME TRACT OF LAND WHICH IS CURRENTLY USED IN ITS ENTIRETY FOR THE PRODUCTION AND TRANSMISSION OF NATURAL GAS PROPERLY RETURNED TO THE LOCAL ASSESSOR?

RULING OF THE STATE TAX COMMISSIONER:

It is my opinion that the property of Columbia Gas Transmission Corporation should be assessed in Lincoln County by the county assessor in the same manner as it has been assessed in the preceding tax year for the tax year 1979. At this time I cannot make a determination as to whether the entire 135,000 acres claimed by Columbia Gas Transmission to be owned in fee should be returned to the Board of Public Works. The case of Ohio Fuel Company v. Price, 77 W. Va. 207, held that real property not used for utility purposes should be assessed by the local assessor. For such a large amount of locally assessed property to be switched to Board of Public Works assessment on such short notice and with so little research possible on the part of the State Tax Department, such ruling at this time does not appear to be prudent.

Ruling dated February 28, 1979. David C. Hardesty, Jr., State Tax Commissioner.

DISCUSSION OF ISSUES

The facts in the matter appear to be as follows. Columbia Gas Transmission Corporation is a natural gas company doing business in the State of West Virginia and elsewhere under the Natural Gas Act, 15 C.S.C. § 717, et seq. and owns approximately 135,000 acres of mineral interests and fee property together with certain pipelines, compressor stations and pumping stations in Lincoln County. The pipelines and other improvements and appurtenances are used in connection with the production and transmission of natural gas and are distributed fairly even and densely over the 135,000 acre tract of land in question. This tract contains 807 gas wells, most of which are uncapped and currently producing natural gas.

The 135,000 acres, which is returned locally for assessment of property taxes by the Lincoln County assessor as "mineral less gas" was transferred to Columbia Gas Transmission Corporation by United Fuel Gas Company as approximately 122,000 acres fee mineral interest and approximately 13,000 acres fee simple absolute. All minerals on the tract are owned by Columbia Gas, including 93,000 acres of coal. No separate interest in the gas ownership was transferred to the company by its predecessors in title, as of this date, the gas interest has not been severed by deed or other instrument of record nor has the owner made application pursuant to West Virginia Code § 11-4-18 to the county commission for a severance of any gas or other mineral interest from its holdings prior to this date.

In an opinion rendered April 28, 1950, entitled United Fuel Gas Company v. McComas, the Honorable John W. Hereford, Judge of the Circuit Court of Lincoln County, instructed the assessor of Lincoln County to delete from the land book all properties used by United Fuel Gas Company in connection with its public utility business, such properties consisting of the developed gas acreage including 125 acres for each producing gas well existing and producing on January 1, 1949. He further directed the assessor to assess for the year 1949 and all subsequent years, all of the coal and surface owned by the plaintiff and to note in the land books that the Board of Public Works has assessed 125 acres of gas mineral interest for all gas wells existing on the property prior to and following his ruling.

Pursuant to Judge Hereford's decision, the assessor entered the property owned by United Fuel Gas Company as "mineral less gas" in the Lincoln County land books. United Fuel did not at that time appeal Judge Hereford's decision. In 1971, Columbia Gas Transmission Corporation merged with United Fuel Gas and through this merger acquired title to the property in question. Columbia Gas Transmission Corporation is now protesting the propriety of the severance by Judge Hereford of a gas interest from its fee and fee mineral interests where there existed no instrument in the chain of title severing the gas from the minerals and where no application for such a severance was filed with the Lincoln County Commission.

The Board of Public Works has already finalized its assessed values for the tax year 1979 and the State Auditor has allocated these values among the various levying bodies. There is, therefore, no mechanism to transfer the assessment from the assessor to the Board of Public Works so that the Columbia property now taxed by the County Assessor of Lincoln County would be taxed under the Board of Public Works assessment. I am of the opinion that the law does not permit a hiatus situation and such a situation would occur if I were to rule against the local assessment of the property in question by the Lincoln County assessor for the tax year 1979. The petitioning taxpayer has allowed its property to be taxed in the same manner by the assessor of Lincoln County since 1950. Yet the taxpayer did not bring forth the idea of consolidating its assessment with the Board of Public Works until December 1978.

I shall begin to consider the request of the taxpayer for a consolidated Board of Public Works assessment for the tax year 1980. Such a determination will hopefully be made in time to inform the assessor of Lincoln County and the taxpayer so that the property returns can be made to the Board of Public Works and the Lincoln County Assessor for the tax year 1980.

As to the taxability of the leasehold estate, the Columbia Coal Gasification Company is asked each year to list all of its leasehold interests within a county by reason of the completion of the personal property report forms for incorporated businesses, LGR Form 12:03. It is assumed that Columbia Coal Gasification Corporation has been dutifully filing all leasehold interests it has on properties owned by Columbia Gas Transmission Corporation. If the assessor assessed a leasehold interest in coal lands leased by Columbia Coal Gasification from Columbia Gas Transmission such leasehold estate would be in the same property tax class as similar property owned by Columbia Gas Transmission and not leased. See Greene Line Terminal Company v. Martin, 122 W. Va. 483, 493 (1940).

It is my opinion that a county assessor can elect to assess a leasehold estate to the lessee or can assess the entire freehold estate to the lessor. If the leasehold estate is assessed to the lessee, such assessment should reduce the assessment of the lessor by a like amount.

TAXABILITY RULING OF THE STATE TAX COMMISSIONER

ASSESSOR: MR. J. CARNEY DAVIS - MARION COUNTY
MR. J. DEMPSEY GIBSON - KANAWHA COUNTY

SUBJECT: PROPERTY BEING USED AS FEDERALLY SUBSIDIZED RENTAL HOUSING PROPERTY FOR LOW AND MIDDLE INCOME PEOPLE.

Pursuant to the provisions of West Virginia Code § 11-3-24a the above named assessors have requested a ruling regarding subject properties.

QUESTION TO BE DECIDED:

WHAT IS THE TAXABILITY STATUS OF UNITY TERRACE, AN APARTMENT COMPLEX, OPERATED BY UNITY HOUSING, INC.; THE FAIRMONT HOTEL, OPERATED BY HUMAN RESOURCE DEVELOPMENT AND EMPLOYMENT, INC.; AND VANDALIA TERRACE HOUSING CORPORATION. ALL OF THE ABOVE NAMED ARE NONPROFIT ORGANIZATIONS AND APARTMENT COMPLEXES. THEY ARE BEING USED AS FEDERALLY SUBSIDIZED RENTAL HOUSING PROPERTY FOR LOW AND MIDDLE INCOME PEOPLE.

RULING OF THE STATE TAX COMMISSIONER:

Until such time that further instructions and guidance are issued from this office, it is my opinion that federally subsidized housing projects for the elderly and the economically and socially disadvantaged remain subject to ad valorem taxation.

Ruling dated February 28, 1979. David C. Hardesty, Jr., State Tax Commissioner.

DISCUSSION OF ISSUES

As you know, the question of the taxability of federally subsidized housing is complex and requires a time-consuming investigation of all factual and legal aspects of the operation of the housing facilities in question. We have received a number of requests for rulings on the taxability of similar properties from assessors throughout the state. Our investigations into these matters have revealed that, in all but one instance, federally subsidized housing projects financed with funds obtained through the West Virginia Housing Development Authority have been required to make provisions in their financing arrangements for the payment of property taxes upon the assumption that such properties will not be granted a favored property tax status by local or state authorities. Further, rents charged to tenants of such housing projects are "fair market rentals" at the going rate in the community which are paid partly by the tenant and partly by the federal government.

Since the continuing investigation of the issues involved in the taxation of federally subsidized housing has disclosed to date no basis for overruling previous decisions of this Department denying the exemption to similarly situated property owners in other counties, there is no reason to allow such an exemption to Unity Terrace, the Fairmont Hotel or Vandalia Terrace.

The taxpayers by counsel have also certified the question of the taxability of these properties. Submitted as further documentation of their claim was a copy of a tax department ruling issued November 12, 1976, in the matter of Presbyterian Manor, which concerned the taxability of a nursing home and a high rise apartment building in Huntington, West Virginia.

At the time the ruling on Presbyterian Manor was issued it was the department's understanding that the financing for those two projects did not include any amount for property taxes. This information has since been confirmed by the West Virginia Housing Development Authority. It is the department's understanding, however, that this is not the case with the Fairmont Hotel, Unity Terrace and Vandalia Terrace.

TAXABILITY RULING OF THE STATE TAX COMMISSIONER

ASSESSOR: MR. J. CARNEY DAVIS - MARION COUNTY

TAXPAYER: THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC.

SUBJECT: A & P PRINTING PLANT IN FAIRMONT, WEST VIRGINIA OWNED BY MAR-MAR CORPORATION AND LEASED TO THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC. (A & P)

Pursuant to the provision of West Virginia Code § 11-3-24a A & P has protested the assessment of certain property located in the City of Fairmont and leased to A & P by Mar-Mar Corporation. This protest has been filed by Mr. J. Dingeman of A & P's tax department.

QUESTION TO BE DECIDED:

MAY THE MARION COUNTY ASSESSOR ASSESS A CHATTEL-REAL INTEREST TO THE GREAT ATLANTIC & PACIFIC TEA COMPANY, INC., BASED ON ITS LEASE OF REAL PROPERTY OWNED BY MAR-MAR CORPORATION?

RULING OF THE STATE TAX COMMISSIONER:

Based on the discussion it is my ruling that there is a chattel-real interest which the taxpayer, Great Atlantic & Pacific Tea Company, Inc., has in real property owned by Mar-Mar Corporation in Fairmont, West Virginia, and that such chattel-real interest is properly the subject of ad valorem tax assessment. Under Code § 11-3-24a, the tax commissioner can rule only as to taxability; the county Board of Equalization and Review under Code § 11-3-24, is charged with the final determination of proper assessed values.

Ruling dated February 28, 1979. David C. Hardesty, Jr., State Tax Commissioner, by John R. Melton, Director, Local Government Relations Division.

STATEMENT OF FACTS

A & P operates a printing plant in Fairmont, West Virginia. This property is owned by Mar-Mar Corporation and leased to A & P. County Assessor J. Carney Davis has assessed A & P in the amount of $158,900 as Class IV personal property. This assessment represents the chattel-real interest which A & P possesses in the real estate owned by Mar-Mar Corporation.

A & P states that the terms of the lease which A & P has with Mar-Mar Corporation does not include any agreement that any real or intangible property would inure to them which would be subject to any supplementary real or personal property tax.

DISCUSSION OF ISSUES

The West Virginia Code § 11-5-3 defines personal property, among other things, as ". . . chattels, real and personal. . ." Commonly a chattel real is called a leasehold interest or leasehold estate. For example, Black's Law Dictionary describes a chattel real as:

> "Such as concerned, or savor of realty, such as leasehold estate; interest issuing out of, or annexed to, real estate. . ."

One of the more prominent Supreme Court cases in West Virginia concerning the taxability of a leasehold estate is the case of Greene Line Terminal Company v. Martin, 122 W. Va. 483, 10 S.E. 2d. 901 (1940). In that case the Greene Line Terminal Company leased wharf facilities from the City of Huntington, West Virginia. Since the property was used for private business purposes, and since the City of Huntington was not subject to ad valorem taxation for its real property, the county assessor assessed the Greene Line Terminal Company's leasehold interest in the property as a chattel real. The Supreme Court of Appeals affirmed the assessor's right to make this type of assessment.

The State Tax Commissioner prints and provides to every county assessor uniform property tax returns to be completed by taxpayers within the county. Tax Department Form "LGR 12:03" entitled "Personal Property Report by Incorporated Firms, Mines and Manufacturers," contains a Schedule 5. Schedule 5 is the place on the return where every incorporated firm must list their leaseholds, including the nature of the leasehold, the location of the property, the description of the property and the value of the leasehold interest.

No information was submitted as to whether taxpayer A & P, when it made its return to the Assessor of Marion County, disclosed the leasehold in question. It does not seem to be a matter of dispute that A & P is in fact leasing the real property in question from Mar-Mar Corporation for the purpose of conducting business.

The general procedure regarding the assessment of leasehold estates is that the leasehold assessed to the lessee should be a deduction from the value of the property as a whole, and the lessor should be assessed only for his remainder interest.

TAXABILITY RULING OF THE STATE TAX COMMISSIONER

ASSESSOR: MR. HAROLD ARMBRECHT - OHIO COUNTY

TAXPAYER: BLAW-KNOX FOUNDRY AND MILL MACHINERY COMPANY, INC.

SUBJECT: CERTAIN BUILDINGS AND MACHINERY OWNED BY THE U. S. DEPARTMENT OF THE ARMY, AND OCCUPIED AND USED BY BLAW-KNOX FOUNDRY AND MILL MACHINERY COMPANY, INC.

Pursuant to the provisions of West Virginia Code § 11-3-24a Blaw-Knox Foundry and Mill Machinery Company, Inc. has protested the assessment of certain property located within its general industrial compound in Washington District of Ohio County, West Virginia. This protest has been filed by Mr. E. E. Vaubel, Tax Manager, White Consolidated Industries, Inc., the parent firm of Blaw-Knox Foundry and Mill Machinery Company, Inc.

QUESTION TO BE DECIDED:

MAY THE OHIO COUNTY ASSESSOR ASSESS GOVERNMENT OWNED REAL AND PERSONAL PROPERTY USED BY A TAXPAYER UNDER PROVISIONS OF A CONTRACT, AS A CHATTEL REAL?

RULING OF THE STATE TAX COMMISSIONER:

Based on the discussion, I am of the opinion that there is in fact a chattel real which the taxpayer, Blaw-Knox Foundry and Mill Machinery, Inc., has in the real and personal property located on its compound in Ohio County and owned by the Department of the Army. Since the petitioning taxpayer does not contend the backtax for 1978 taxes is in any case improper, I am of the opinion that all assessments made by Assessor Armbrecht on the 1979 real and personal property tax books, with respect to the taxability and classification of such properties, are correct.

Ruling dated February 28, 1979. David C. Hardesty, Jr., State Tax Commissioner, by John R. Melton, Director, Local Government Relations Division.

STATEMENT OF FACTS

Blaw-Knox and the Department of the Army had a contractual relationship through contract number DAAE07-76-0008. Blaw-Knox is subcontractor to Chrysler Corporation for a contract to build M-60 tanks. As a part of the contractual agreement with the Department of the Army, certain buildings were constructed, modified, or enlarged within the Blaw-Knox industrial compound located in Ohio County, West Virginia. Blaw-Knox had the improvements to real estate made, and was reimbursed by the U. S. Army for these improvements. In turn, Blaw-Knox contractually agreed with the Department of the Army that the improvements made to real property were the property of the U. S. Army. Also, there is mill machinery currently installed within the Blaw-Knox compound in Ohio County, West Virginia, which is owned by the Department of the Army; this property is used by Blaw-Knox to produce the tank turrets and armament required by the subcontract with Department of the Army through Chrysler Corporation.

More specifically, as a part of its facilities contract the Department of the Army agreed to pay for the constructing of two new buildings and the extension of several existing bays at the Blaw-Knox compound. The largest new building, containing nearly 120,000 square feet, is used to house ongoing Blaw-Knox operations of a nondefense nature. The previous existing Blaw-Knox buildings will now be used primarily for armor production under the defense subcontract. Under the contract, the armor production facilities must be maintained by Blaw-Knox for at least fifteen years. Also paid for by the Department of the Army, was a 13,000 square foot office building which is only partially used in connection with the defense contract.

Within the standard contract language, specifically clause J-13 (b), the contractor shall pay all taxes, assessments and charges; the Department of the Army will reimburse the contractor for any and all taxes attributable to the contract with the Department of the Army. In a letter from Colonel C. T. Lakes, Chief of the Procurement Law Division, Judge Advocate General Corps, Department of the Army to John R. Melton, Director of Local Government Relations Division, State Tax Department dated June 13, 1978, concerning the taxability of Army-owned property located in the Blaw-Knox compound, the following statements were made:

> ". . . there are a few statutes, for example, Title 10, United States Code, Section 2667, involving property leased by the Army to others, which would permit taxation with respect to that property if the State law or local ordinance so provides, but the taxpayer in each case is never the Army. In the case of Section 2667, for example, the taxpayer is the lessee of the property.
>
> As Major Reres explained over the telephone sometime ago, absent some specific statutory authority to the contrary, the Army must resist any attempt to tax its activities, its facilities, or its property. If a contractor, however, is legally required to pay a state or local tax, and the contract calls for reimbursement of that tax, the Army will make reimbursement to the contractor. In no sense does the Army encourage or authorize a contractor to avoid its legal state and local tax obligations."

Ohio County Assessor, Harold P. Armbrecht, in a letter dated January 30, 1979 addressed to Mr. E. E. Vaubel, Tax Manager, White Consolidated Industries, Inc., the parent company of Blaw-Knox Foundry and Mill Machinery Company, Inc., advised Mr. Vaubel that he was making the following assessments with respect to the Blaw-Knox compound in Ohio County, West Virginia:

1) Blaw-Knox Foundry and Mill Machinery Company, Inc. as per your submitted personal property return and as you suggest, using sound values as shown in that report, to a total of $2,530 Class I, and $4,066,070 in Class IV.

2) Blaw-Knox, as a leasehold estate, (lessee) $2,189,180 on 1979 Personal Property books.

3) Blaw-Knox, as a leasehold estate (lessee) of government owned buildings in the amount of $2,189,180 as a 1978 backtax assessment on 1979 Personal Property books.

4) Blaw-Knox as a leasehold estate (lessee) of government owned machinery and equipment in the amount of $1,815,060 for 1979 Personal Property books.

5) Blaw-Knox as a leasehold estate (lessee) of government owned machinery and equipment in the amount of $1,815,060 as a 1978 backtax assessment on 1979 Personal Property books.

6) Blaw-Knox as a leasehold estate (lessee) of government owned machinery and equipment (furnished to Blaw-Knox by Chrysler) in the amount of $850,650 on 1979 Personal Property books.

7) Blaw-Knox as a leasehold estate (lessee) of government owned machinery and equipment (furnished to Blaw-Knox by Chrysler) in the amount of $850,650 as a 1978 backtax assessment on 1979 Personal Property books.

By a letter dated February 5, 1979 from Assessor Armbrecht to Mr. Vaubel, a correction was made to item number 2 to read as follows:

"To Blaw-Knox as a leasehold estate (lessee) of government owned buildings in the amount of $2,189,180 on the 1979 Personal Property books."

DISCUSSION OF ISSUES

The West Virginia Code § 11-5-3, defines personal property, among other things, as ". . . chattels, real and personal. . ." Commonly a chattel real is called a leasehold interest or leasehold estate, although the term is much more encompassing. For example, Black's Law Dictionary describes a chattel real as: "Such as concerned, or savor of the realty, such as leasehold estates; interests issuing out of, or annexed to, real estate. . ."

Intermountain Realty Co. v. Allen 90 P. 2s 704, 706, reads, in part, as follows: "'Chattels real' are interests which are annexed to or concern real estate, as estates for years, at will, by sufferance, from year to year, and various interests of uncertain duration. 'Chattels real' are to be distinguished from a freehold which is realty. A freehold is an estate for life or in fee; a chattel real, for a less estate." (emphasis added)

Of great help in analyzing this appeal, is the interpretation of the ability of the county assessor to tax a leasehold estate under provisions of Code § 11-3-5 as described in the case of Greene Line Terminal Company v. Martin, 122 W. Va. 483, 10 S.E. 2d 901 (1940). Greene Line Terminal is not precisely on point with the situation on hand; however, it is similar in many ways. In the Greene Line case, the petitioner was a private company which was conducting its business on wharf facilities owned by the City of Huntington. Because the county assessor could not assess the real estate to the City of Huntington, a tax exempt entity, the assessor chose to assess the interest in real property to the petitioner as personal property in the form of a leasehold estate. Also, in the Greene Line Terminal case, the assessor backtaxed the leasehold estate for four prior tax years to the petitioner. The West Virginia Supreme Court of Appeals upheld both the current year assessment and the four prior year's backtaxes of the petitioner's leasehold estate. If the protesting taxpayer in the current case had entered into a traditional lease with the Department of the Army, the resolution to the issue at hand would be the same as arrived at by the Supreme Court of Appeals in the Greene Line Terminal case, without further discussion. In the current case further discussion is necessary because the Department of the Army and Blaw-Knox did not enter into a traditional, well defined lessor-lessee relationship. Rather, the relationship between the Department of the Army and Blaw-Knox is one where the Department of the Army pays Blaw-Knox a certain amount to produce for the Department of the Army. Blaw-Knox has the use of new buildings and government-owned equipment to aid in the producing of a product desired by the Army because of the facilities contracted between the subcontractor, Blaw-Knox and the Department of the Army itself.

The facility contract has been referred to in letters and conversation between Blaw-Knox and Assessor Armbrecht and Blaw-Knox and the State Tax Department. At one time the State Tax Department requested to view a copy of the facilities' contract and such request was denied by Blaw-Knox on the grounds that the facility contract constituted a confidential piece of information and was not subject to disclosure for national security reasons.

A California case which is almost precisely on point with this fact situation is Kaiser Co., Inc. v. Reid, County Tax Collector, et al. (United States, intervener), 184, P. 2d 879 (1947). In that case Kaiser was a defense contractor who had the use of land, buildings and machinery owned by the United States government to produce and deliver vessels to the government. The contractor had no lease and paid no rent. Contractor was paid for his product by the government. The premises in question were built by Kaiser and were government properties as a result of a "facilities contract". The California Supreme Court upheld the right of the county tax collector to collect a property tax on Kaiser's interest in the property as an "estate for years" which was "a possessory interest in lands or improvements."

TAXABILITY RULING OF THE STATE TAX COMMISSIONER

ASSESSOR: MR. ALBERT FULLEN - MONROE COUNTY

SUBJECT: CLASSIFICATION OF PROPERTY: WHETHER CERTAIN PARCELS OF REAL PROPERTY LIE WITHIN OR WITHOUT PETERSTOWN CORPORATION, MONROE COUNTY AND ARE THEREFORE SUBJECT TO OR NOT SUBJECT TO PROPERTY TAX LEVIES BY THE TOWN OF PETERSTOWN

West Virginia Code § 11-3-24a outlines procedures to be followed where the taxpayer and county assessor disagree as to whether property is subject to taxation. Under provisions of that section, the county assessor or the taxpayer is to request a ruling by the tax commissioner as to the taxability of the property in question. The tax commissioner has until February 28 of the assessment period to render his decision. This decision may be appealed by the assessor or the taxpayer to the Circuit Court within thirty days of the date of such an opinion.

QUESTION TO BE DECIDED:

HAVE THE PARCELS OF REAL PROPERTY OWNED BY TAXPAYER JERRY K. RAINES AND OTHERS BEEN INCORRECTLY CLASSIFIED AS BEING TAXABLE WITHIN THE CORPORATE LIMITS OF THE TOWN OF PETERSTOWN BECAUSE AN ERROR WAS MADE IN THE CONDUCTING OF A NEW SURVEY?

RULING OF THE STATE TAX COMMISSIONER:

Based on the facts as I understand them and as they have been assembled and presented to me, it is my ruling that the assessor of Monroe County should abide by the original survey for the Town of Peterstown in determining which properties are to be taxed as within the Town of Peterstown and which properties are to be taxed as being outside the Town of Peterstown. This ruling affects entries that the assessor has made in the land books for the 1979 tax year. By law and official opinion issued pursuant to Code § 11-3-24a, to be effective concerning the 1978 tax year, would need to be issued on or before February 28, 1978. It is my feeling, however, that the same conditions as exist now existed during the assessment and collection period respecting the 1978 tax year.

Properties specifically identified as being improperly classed within the Town of Peterstown, not necessarily an all-inclusive list, are as follows:

A) Jerry K. Raines (3 Entries)

1. Lot 11, Section 2; Map 33-C, Parcel 18

2. Lots 35 and 36, Section 2; Map 33-C, Parcel 34

3. Lots 10, 11 and 12; Map 33-C, Parcels 5, 17 and 19

B) Jerry C. Raines (1 Entry)

Lots 2, 3 and 4, Section 2; Map 33-C, Parcel 24

C) Thelma Raines

Could not identify lot or parcel number on land book, but Osby Harvey, Mayor, did remember they only took approximately three (3) feet of this property.

D) Ray G. and Beulah Raines (2 Entries)

1. Lot 32, Section 1; Map 33-C, Parcel 61

2. Lot 30, Section 1; Map 33-C, Parcel 59

E) Gertrude Raines (1 Entry)

Lot 31, Section 1; Map 33-C, Parcel 60

F) Gordon and Vivian Dillon (1 Entry)

90 Poles; Map 33, Parcel 41

G) David and Marie Dillon (1 Entry)

1 Acre; Map 33, Parcel 121

H) H. H. and Pauline Dove (2 Entries)

1. 9 Acres; Map 33, Parcel 43

2. 120 Poles (3/4 Acre) Not Identified by map and parcel number

Ruling dated February 28, 1979. David C. Hardesty, Jr., State Tax Commissioner.

STATEMENT OF FACTS

Mr. Jerry K. Raines and others similarly situated in Red Sulphur District, Monroe County have appealed to the State Tax Commissioner for a ruling as to whether their property is within the Town of Peterstown and therefore subject to property tax levies for the Town of Peterstown. Taxpayers claim such properties are located in Red Sulphur District; Assessor Albert Fullen has assessed properties in Peterstown Corporation.

Mayor Osby Harvey of the Town of Peterstown, and the town council, employed Mr. James Nooncaster, Surveyor, to resurvey the boundary lines of the Town of Peterstown. When the new survey was completed, it differed from the original survey included in the original application for incorporation made to the Judge of the Monroe County Circuit Court on November 11, 1921 in that it took in certain properties heretofore not included in the corporate limits. Taxpayer Jerry Raines was among those taxpayers owning property in the section of Red Sulphur District included as a part of Peterstown by the new survey.

Subsequent to Mr. Nooncaster's completion of his survey, Mayor Harvey notified County Assessor Albert Fullen of the change of boundaries so that Assessor Fullen could assess the properties included in the corporate line by the new survey to the list of properties appearing in the county land book and county Personal Property book as being in Peterstown Corporation and deleting the same property entries from Red Sulphur District. The significant difference so far as the taxpayers were concerned was that the Municipality of Peterstown would be applying its levy rate to the value of their respective properties and the Sheriff of Monroe County would be collecting additional property tax to be distributed to the Town of Peterstown.

On Monday, March 6, 1978, at 10:00 a.m., a meeting was held in Monroe County Courthouse in Union, West Virginia. Present at the meeting were members of the Monroe County Commission, County Clerk Virgil Dixon, Prosecuting Attorney Jon Duncan, County Surveyor Hamilton Sharp, and a group of property owners protesting the boundary change for the Town of Peterstown, West Virginia. At that meeting the County Surveyor made the statement that he had plotted maps of the Town of Peterstown, once from the original survey and once from the new survey. It was Mr. Sharp's opinion that the new survey was incorrect. County Surveyor Sharp explained at the meeting that an erroneous bearing call, which was marked out on the old survey by the original surveyor, had been included in the new survey which threw every-

thing off from that point. The County Surveyor was of the opinion that the subsequent surveyor, Mr. Nooncastle, had failed to use natural monuments called for in the original survey and still in existance. Mr. Sharp stated that natural monuments had priority over bearing references in a survey.

Attending that meeting in behalf of the State Tax Department was Mr. Michael E. Poling. Mr. Poling has several years experience in abstracting and mapping property and property rights. Upon review of the information available at the Monroe County Courthouse and at the meeting, Mr. Poling was of the opinion that County Surveyor Sharp was correct in his ascertain and that the correct boundary for the Town of Peterstown was the boundary which had been used since the original survey was made.

DISCUSSION OF ISSUES

There is no evidence to refute the assumption that all parties to this controversy have acted in good faith and with the best of intentions. Mayor Harvey and the Council of the Town of Peterstown acted in good faith in employing Mr. Nooncaster. Mr. Nooncaster apparently acted in good faith. Certainly Assessor Fullen was within his rights and authority to accept an official survey presented to him by the mayor of a municipality, and to base reclassification of properties upon the location of the corporate limits line contained in the new survey. The county surveyor, for reasons demonstrated, believes that the original survey was correct and that the new survey is wrong.

The Tax Commissioner traditionally puts great faith and weight in the opinion of his employees in matters of this nature based upon their performance, training and experience. Michael Poling has advised his employer that it is his opinion that the new survey is incorrect as compared with the original survey.

TAXABILITY RULING OF THE STATE TAX COMMISSIONER

ASSESSOR: MR. LEWIS GLENN MILLS - WAYNE COUNTY

SUBJECT: A BUILDING SITUATED UPON LAND OWNED BY THE TOWN OF CEREDO, WAYNE COUNTY, WEST VIRGINIA, USED AS A SUPERMARKET/DEPARTMENT STORE FACILITY BY HART STORES, INC.

West Virginia Code § 11-3-24a outlines procedures to be followed where the taxpayer and county assessor disagree as to whether property is subject to taxation. Under provisions of that section, the county assessor or the taxpayer is to request a ruling from the tax commissioner as to the taxability of the property in question. The tax commissioner has until February 28 of the assessment period to render his decision.

Pursuant to the provisions of West Virginia Code § 11-3-24a, Hart Stores, Inc., hereinafter referred to as "taxpayer", has protested the assessment of certain property located within the municipality of Ceredo, Wayne County, West Virginia. This protest was received on April 2, 1979 and was filed by Charles H. Hire, Esquire, Gingher and Christensen, 311 East Broad Street, Columbus, Ohio 43215, Counsel for Hart Stores, Inc.

QUESTION TO BE DECIDED:

WHETHER THE PURCHASE OF A TRACT OF LAND BY A MUNICIPALITY FOR PURPOSES OF ERECTING A COMMERCIAL DEVELOPMENT FACILITY THEREON RENDERS ANY PROPERTY INTEREST IN IMPROVEMENTS SUBSEQUENTLY CONSTRUCTED ON THAT TRACT AND FINANCED THROUGH PROCEEDS DERIVED FROM COMMERCIAL DEVELOPMENT REVENUE BONDS EXEMPT FROM PROPERTY TAXES.

RULING OF THE STATE TAX COMMISSIONER:

The purchase of a tract of land by a municipality for purposes of erecting a commercial development facility thereon renders any property interest in improvements subsequently constructed on the tract which has been financed through the issuance by the municipality of commercial development revenue bonds under provisions of the Industrial Development and Commercial Development Bond Act exempt from local ad valorem taxation.

The Assessor of Wayne County erroneously assessed for property tax purposes a building constituting part of a commercial development project as personal property owned by the taxpayer. The building in question, from the inception of the project and until the full redemption of all outstanding commercial development revenue bonds issued to finance the project's construction, was and is owned by the Town of Ceredo. West Virginia Code § 13-2C-15 exempts all such property while owned by the local governmental unit from taxation. The conditions imposed by lease agreement for the transfer of ownership of the project to the taxpayer have not yet occurred. Therefore, the Assessor of Wayne County is instructed, for the assessment period beginning July 1, 1979, to delete from his personal property records and record as exempt realty that portion of the assessment attributable to the building in question.

Since there is no statutory provision for refunding taxes paid pursuant to an error made in the taxability or classification of property, taxpayer's claim for refund of ad valorem taxes paid for the assessment period beginning July 1, 1977 in the amount of $15,056.55 is hereby denied.

It should be noted that this taxability ruling is limited to the particular facts and circumstances of the taxpayer herein involved and does not constitute a ruling of general applicability to the taxation of property subject to lease-purchase arrangements or other interests in real property of less than a freehold for which exemption is claimed pursuant to West Virginia Code § 11-3-9. Such property interest may or may not be taxable depending upon the particular use and purpose to which such property is devoted by its owner.

It should be further noted that the taxpayer has requested relief for the assessment periods beginning July 1, 1977 and July 1, 1978. Taxpayer's first request for a taxability ruling from the Tax Commissioner was received on April 2, 1979. The statutory deadline to appeal taxability issues to the Tax Commissioner's office expires on February 28th of each assessment year. Code § 11-3-24a. Thus, to obtain a taxability ruling for the assessment period beginning July 1, 1977, the request must have been filed by February 28, 1978. Likewise, to obtain such ruling for the assessment period beginning July 1, 1978, the request must have been filed no later than February 28, 1979. Retroactive relief may not be given. Since the taxpayer failed to timely file petitions for taxability rulings for prior assessment periods, the taxability determinations contained in this ruling will apply

to the current assessment period beginning July 1, 1979 and will not affect the 1979 tax year property taxes due and payable in September, 1979 and March, 1980.

Ruling dated September 28, 1979. David C. Hardesty, Jr., State Tax Commissioner.

STATEMENT OF FACTS

Under authority provided in the West Virginia Industrial and Commercial Development Bond Act, West Virginia Code § 13-2C-1, et seq., the Town Council of Ceredo, West Virginia adopted on February 7, 1976, a resolution calling for the issuance of $3,000,000 principal amount of commercial development revenue bonds for the purpose of

> ". . . acquiring by purchase and construction real and personal property comprising a commercial project within the bounds of [Ceredo], for lease with options to purchase to Big Bear Stores Company . . ."

Section 9 of the above-quoted resolution binds the town to the terms of a lease effective as of February 1, 1976 executed between the governing body of Ceredo and Big Bear Stores Company of Ohio. Under Sections 4.1 and 4.2 of said Lease, the town agreed to lease to Big Bear of Ohio a commercial project consisting of approximately twelve acres of land, a building to be constructed by Big Bear, machinery and equipment and all other property interests pertaining to the project. Big Bear as tenant agreed under Section 3.1 of the Lease to construct the building, furnish the necessary equipment, and under Section 4.1 to pay to the town on a semi-annual basis rental payments for the use of said project. Each rental payment constituted an amount equal to the periodic installment payment of principal, premium (if any) and interest due on the commercial development bonds.

West Virginia Code § 13-2C-8 provides for the manner in which commercial and industrial revenue bonds are to be secured and permits the county or municipality to secure such revenue bonds by a trust indenture by and between the local

governmental unit and a corporate trustee within or without the State of West Virginia. Subsequent to its adoption of the resolution and entrance into a lease agreement with Big Bear of Ohio, the Town of Ceredo executed a trust indenture agreement with the Ohio National Bank of Columbus, Ohio.

By deed dated February 10, 1976, Big Bear Stores of Ohio conveyed to the town 12.145 acres of unimproved real estate located within the municipal boundaries upon which the commercial project contemplated in the series of agreements between the town and the taxpayer was later constructed.

On August 30, 1976, Big Bear of Ohio and its subsidiaries sold substantially all of their assets, including leasehold interests and liabilities to Big Bear Stores Company, a Delaware corporation. At that time, Hart Stores, Inc., the taxpayer herein, became a subsidiary of Big Bear of Delaware and acquired the property interest in the Ceredo project from Big Bear. Hart Stores currently operates the Ceredo facility. Both Big Bear of Delaware and Hart Stores are qualified to do business in West Virginia.

Construction of the project having been completed on November 10, 1976, the Assessor of Wayne County first assessed said property for the assessment period beginning July 1, 1977 as follows:

Item	Assessed Valuation	Status	Annual Tax
12.145 acres real estate	$ 12,000	nontaxable	-0-
Building	$ 475,270	taxable	$15,056.55
Equipment	$ 165,910	taxable	$ 5,256.03
Inventory	$ 487,060	taxable	$15,430,06
Total	$1,128,240		$35,742.64

No alteration in the assessment was made for assessment periods beginning July 1, 1978 and July 1, 1979. Taxpayer has remitted property taxes for the period in question in the amount of $35,742.64. Taxpayer seeks a refund of only that portion of property taxes remitted attributable to the building in the amount of $15,056.55.

ARGUMENTS OF PARTIES

Taxpayer maintains that the entire commercial project, consisting of both the building and the land upon which it is situated, is exempt from local taxation as public property under West Virginia Code § 13-2C-15. It is further argued that because the building constituted part of a commercial development facility erected with proceeds derived from the issuance by the Town of Ceredo of commercial development revenue bonds, exemption should attach to the building even though construction of the facility did not take place until after the project site had been conveyed to the town and the commercial revenue bonds issued. In support of this argument, the taxpayer has cited the general law of fixtures where it is acknowledged that any building or other improvement constructed by a tenant during the term of his lease attaches to and becomes a part of the realty owned by the landlord.

Assessor Mills contends that, inasmuch as the building in question was not in existence at the time the project site was conveyed to the Town of Ceredo, the building constitutes an improvement or fixture erected upon leased land by the tenant which, under West Virginia Code § 11-5-3 is defined as personal property. He further argues that, under provisions of that section and Code § 11-3-7, where the value of the fixture was not included with the value of the realty in the proper land book, the fixture must be assessed as personal property to the true owner.

DISCUSSION OF ISSUES

By statute, fixtures attached to realty which are owned by a party separate from the landowner must be assessed for property tax purposes in the name of their owner. West Virginia Code § 11-3-7. Such fixtures are defined as personalty under Code § 11-5-3. Buildings as well as machinery and equipment can constitute fixtures, Employees Liability Association Corporation v. Hartford Accident and Indemnity Co., 151 W. Va. 1062, 158 S.E. 2d 212 (1967), and thus must be assessed as personal property in accordance with Code § 11-3-7. (See Dillon v. Bare, 60 W. Va. 483, 56 S.E. 390 (1906), where buildings deemed trade fixtures were assessed and taxed in the name of the lessee.) A proper assessment of privately-owned commercial buildings situated upon land leased by a company which is not also the owner of the building site would show the land assessed to the landlord in the land books of

the county and the building, machinery, equipment and other items constituting trade fixtures to the lessee in the county's personal property records. Such an assessment of the commercial facility in question would have been correct but for the fact that the building whose assessment is here being contested was constructed with proceeds generated through commercial development revenue bonds issued by the Town of Ceredo pursuant to the Industrial Development and Commercial Development Bond Act, (the Act), West Virginia Code § 13-2C-1 et seq.

Under provisions of this statute, counties and municipalities are authorized to assist commercial and industrial enterprises by serving as the funding source for their development and construction. The Act was passed in a time of economic recession and was designed to stimulate the economy of the state by offering incentives to private businesses to expand into West Virginia.

The means by which the Legislature sought to accomplish its goal of commercial and industrial expansion was to allow local governmental units to issue revenue bonds under certain specified conditions. The Act requires that prior to the issuance of the bonds, the county or municipality shall agree to "lease, sell, or finance" the bonds in a manner in which the lessee or purchaser remits payment to the governmental entity in an amount sufficient to recoup the principal and interest of the bond issue; to cover repair and maintenance costs if the lessee or purchaser does not assume them; and an amount to build up and maintain any reserves required at the discretion of the governing body. Code § 13-2C-9.

Costs covered by application of bond proceeds as set forth in Code § 13-2C-12 include:

1. The acquisition of the project site;

2. Construction of the facility, in whole or in part;

3. Architects', engineers', consultants', and legal fees;

4. The purchase price or rental of any part of a project that may be acquired by purchase or lease;

5. Expenses incurred in connection with the authorization, sale, and issuance of the revenue bonds;

6. Interest on the revenue bonds for a period prior and during construction of the project not to exceed twelve months after completion; and

7. Other reasonable and necessary expenses of establishing and acquiring the project.

Code § 13-2C-15 grants to all real and personal property acquired as a part of a commercial or industrial development project immunity from local ad valorem taxation. Such property is deemed public property and is to be exempted as long as the local governmental unit remains its owner. It is therefore imperative for proper assessment of the property in question to determine if and when the taxpayer became owner of the project or any part thereof.

Taxpayer's Property Interest

In 1976, the Town of Ceredo chose to utilize the mechanism prescribed in West Virginia Code § 13-2C-1 et seq. to encourage commercial development within its boundaries. By deed dated February 10, 1976, it acquired land upon which a supermarket/department store facility was later to be constructed. See Exhibit B, Deed. In accordance with the Industrial Development and Commercial Development Bond Act, the town entered into an agreement with a commercial enterprise, Big Bear Stores of Ohio, to lease to the enterprise a project erected with proceeds from a revenue bond issue. See Exhibit C, Lease, Section 3.2. That project was defined to include the building whose ownership and assessment is here questioned. See Exhibit C, Lease, Section 1. For use of the project the taxpayer agreed to remit a rental fee sufficient to pay monthly installment payments on the principal and interest of the bonds. See Exhibit C, Lease, Section 4.3.

The lease agreement also embodied in Section 3 a contract to construct the facility and designated Big Bear of Ohio (subsequently Big Bear of Delaware) as its agent to effect such construction. Thus, by the very terms of the lease itself, Big Bear became lessee and general contractor with authority to hire and fire subcontractors engaged to complete various construction phases of the project. See Exhibit C, Lease, Section 3.1.

Further, a review of the lease agreement reveals that at no time did the parties consider it as a contract to purchase the property of the project by the taxpayer until all outstanding

bond obligations had been satisfied. Big Bear was given an option to purchase prior to the expiration of the lease provided all outstanding obligations arising under the bonds were discharged and the sum of three hundred dollars remitted to the town. See Exhibit C, Lease, Section 10.2. Notwithstanding any right to purchase prior to expiration of the lease term, ownership of the property became vested with Big Bear upon final payment of a sum sufficient to discharge all outstanding bond obligations and expenses arising thereunder plus the sum of three hundred dollars. See Exhibit C, Lease, Section 10.3. It seems clear from these provisions that the parties to the lease contract did not intend that ownership of the project be transferred to Big Bear until after all outstanding obligations with respect to the commercial development bonds had been satisfied.

Shortly after signing the lease agreement, the town proceeded to issue the revenue bonds as prescribed in the Lease agreement and in accordance with the Industrial Development and Commercial Development Bond Act. Pursuant to authority granted in Section 8 of the Act, the town then secured the bonds by a trust indenture with the Ohio National Bank of Columbus, pledging the entire project as collateral to secure all obligations of the revenue bonds. See Exhibit D, Trust Indenture. The parties to the agreement included only the Town of Ceredo and the Bank. The town alone stepped into the role of mortgagor when it executed the trust indenture with the Bank. A mortgagor is defined in Black's Law Dictionary, Revised Fourth Edition, p. 1163, as:

> "One who having all or some part of title to property, by written instrument pledges that property for some particular purpose, such as security for a debt."

Clearly, one having no title to property cannot pledge that property as security. The fact that the taxpayer was not required to sign the trust indenture as copledger is another indication that the property interest in the commercial facility to be constructed was that of a mere leasehold with an option to purchase.

As proof of ownership by the taxpayer, the Assessor of Wayne County has referred to the fact that the deed executed between the town and the taxpayer conveyed realty only and did not mention the transference of any existing or future improvements made to the property. West Virginia Code § 36-3-10

stipulates that:

> "Every deed conveying land shall, unless an exception be made therein, be construed to include all buildings, privileges and appurtenances of every kind belonging to the lands therein embraced."

It is my opinion that, where the conveyance of the land is dependent upon a contract to subsequently construct improvements thereon, the deed is to be construed as including the future additions intended at the time of transferral if there exists no provision in the deed or contract to the contrary. Buildings erected by a tenant on leased premises pursuant to a lease obligating him to erect such improvements are generally considered appurtenant to and a part of the land and may not be removed by the lessee without express consent of the lessor. County of Prince William v. Thomason Park, 91 S.E. 2d 441 (Va. 1956). No provision in the deed or lease between Big Bear and the municipality reserves to Big Bear as seller of the land any ownership interest in the building in question nor is permission granted to Big Bear as lessee for removal of the building at the expiration of the lease. Rather, from the documents evidencing the transaction upon expiration of the lease and fulfillment of all bond obligations, the land and the building will be transferred as a commercial unit to the taxpayer. Thus, the fact that the deed transferring ownership of the project site to the Town of Ceredo did not expressly include the facility to be constructed on that site is of no consequence. The transfer of the land included transfer of the facility and any other improvements resulting from entire development transaction between the town and the taxpayer's predecessor, Big Bear of Ohio.

From the foregoing discussion, it seems apparent that the taxpayer's interest in the commercial project did not rise to the level of ownership during the assessment periods in question. Rather, legal title remained with the Town of Ceredo and will so remain until all the terms of the lease agreement in effect between the town and the taxpayer are fulfilled.

Taxability of Taxpayer's Interest

It has long been held in West Virginia that a leasehold estate in property otherwise exempt is taxable as a chattel real. Harvey Coal and Coke Co. v. Dillon, 59 W. Va. 605, 53 S.E. 928 (1905). Were the commercial retail facility in

question not funded through proceeds derived from commercial development revenue bonds, the holding in the more recent case of Greene Line Terminal Company v. Martin, 122 W. Va. 483, 10 S.E. 2d 901 (1940) would be substantially on point with the situation at hand. In Greene Line Terminal, the petitioner was a private company conducting its business on wharf facilities owned by the City of Huntington. Because the county assessor could not assess the real estate to the City of Huntington, a tax-exempt entity, the assessor chose to assess the formal leasehold interest in the realty held by the petitioner as personalty. The Supreme Court upheld the assessment. The factor that significantly distinguishes Greene Line from the instant case is that the taxpayer's leasehold interest arose as a consequence of a town's desire to take advantage of the legislative plan to advance commercial and industrial development in West Virginia enacted as the Industrial Development and Commercial Development Bond Act. The Legislature expressly granted favored tax status to facilities constructed under the statutory provisions embodying that development plan. Code § 13-2C-15. The taxation of a leasehold or other possessory interest in any "property which a county commission or municipality may acquire to be leased . . ." under the Act would in effect deny the exemption so thoughtfully granted and circumvent the intent of the Legislature to offer such tax relief as an incentive to private enterprise to relocate or expand their facilities in the State. Thus, while it is permissible to tax such possessory interests in other exempt properties, it does not seem appropriate to do so where industrial and commercial development property is involved.

TAXABILITY RULING OF THE STATE TAX COMMISSIONER

ASSESSOR: MR. HAROLD P. ARMBRECHT - OHIO COUNTY

TAXPAYER: BLAW-KNOX FOUNDRY AND MILL MACHINERY COMPANY, INC.

SUBJECT: CERTAIN BUILDINGS AND MACHINERY OWNED BY THE U. S. DEPARTMENT OF THE ARMY, AND OCCUPIED AND USED BY BLAW-KNOX FOUNDRY AND MILL MACHINERY COMPANY, INC.

West Virginia Code § 11-3-24a outlines procedures to be followed where the taxpayer and county assessor disagree as to whether property is subject to taxation. Under provisions of that section, the county assessor is to request a ruling by the Tax Commissioner as to the taxability of the property in question. The Tax Commissioner has until February 28 of the assessment period to render his decision. This decision may be appealed by the assessor or the taxpayer to the Circuit Court within thirty days of the date of such an opinion.

Pursuant to the provision of West Virginia Code § 11-3-24a, Blaw-Knox Foundry and Mill Machinery Company, Inc. has protested the assessment of certain property located within its general industrial compound in Washington District of Ohio County, West Virginia. This protest has been filed by Mr. E. E. Vaubel, Tax Manager, White Consolidated Industries, Inc., the parent firm of Blaw-Knox Foundry and Mill Machinery Incorporated.

QUESTION TO BE DECIDED:

MAY THE OHIO COUNTY ASSESSOR ASSESS GOVERNMENT-OWNED REAL AND PERSONAL PROPERTY USED BY A TAXPAYER UNDER PROVISIONS OF A CONTRACT, AS A CHATTEL REAL?

RULING OF THE STATE TAX COMMISSIONER:

Based upon the identical nature of the factual and legal situations with those of the 1979 tax year for this taxpayer, I am of the opinion that there continues to be a chattel real which taxpayer, Blaw-Knox Foundry and Mill Machinery, Inc. has in the real and personal property located on its compound in Ohio County and owned by the Department of the Army. I am of the opinion that all assessments made by Assessor Armbrecht on

the 1980 real and personal property tax books, with respect to the taxability and classification of said properties in the name of Blaw-Knox Foundry and Mill Machinery, Inc., are correct.

The written opinion of the Tax Commissioner for the 1979 tax year is officially appended to this opinion and made an official part thereof.

Ruling dated February 4, 1980. David C. Hardesty, Jr., State Tax Commissioner.

STATEMENT OF FACTS

On February 28, 1979, the State Tax Commissioner issued an official taxability ruling concerning certain buildings and machinery owned by the U. S. Department of the Army and occupied and used by Blaw-Knox Foundry and Mill Machinery Company, Inc. in Ohio County, West Virginia. That ruling held that the property in question, namely a chattel real interest in property owned under contract by the U. S. Department of the Army, was taxable personal property in the name of taxpayer Blaw-Knox Foundry and Mill Machinery Company, Inc. That ruling bound the assessor for the tax year 1979.

Pursuant to the provisions of West Virginia Code § 11-3-24a, taxpayer Blaw-Knox appealed the ruling of the State Tax Commissioner to the Circuit Court of Ohio County, West Virginia in an appeal styled Civil Action No. 79-AP-26.

For the tax year 1980, taxpayer Blaw-Knox continues to allege that certain property which was held by the Tax Commissioner to be a taxable personal property interest to Blaw-Knox should instead be considered as tax exempt. To protect its interest and to have both tax years 1979 and 1980 made a part of the same Circuit Court appeal, taxpayer Blaw-Knox first inquired of Ohio County Assessor Harold P. Armbrecht whether he intended to assess the personal property interest in question to Blaw-Knox for the tax year 1980. By letter dated January 21, 1980, Assessor Armbrecht confirmed that the chattel real interest in question would again be taxed to Blaw-Knox for the tax year 1980.

Pursuant to Code § 11-3-24a, taxpayer Blaw-Knox has again requested a Tax Commissioner's ruling regarding the taxability of the chattel real interest.

DISCUSSION OF ISSUES

The issues framed by this appeal do not appear to vary from the issues presented in the appeal by taxpayer Blaw-Knox in February, 1979 for the 1979 tax year. The fact situation for the 1980 tax year appears to be identical to the fact situation for the 1979 tax year with respect to taxpayer Blaw-Knox's right to possess, use and enjoy U. S. Government property to the exclusion of all others. Further, taxpayer has alleged no additional defenses or citations to refute the February 28, 1979 ruling by the State Tax Commissioner.

THE COUNTY COMMISSION AS A BOARD OF EQUALIZATION AND REVIEW

The county commission shall review all assessments made by the assessor. When the commission reviews the work of the assessor, it sits as the board of equalization and review, and must meet annually no later than the first day of February for the purpose of reviewing and equalizing the assessment made by the assessor for the current year. The board shall not adjourn for a longer period than three days at a time until this work is completed. Under an amendment to Code § 11-3-24 effective June 10, 1979 the board cannot adjourn sine die (final adjournment) before the fifteenth day of February. It shall not remain in season for a longer period than twenty-eight days.

At the board's first meeting the assessor shall submit the property books for the current year in their completed form, except that their levies shall not be extended.

The assessor and his assistants shall attend and render every possible assistance in connection with the value of property assessed by them. The commission will examine the property books, and will add to them the names of the persons who were omitted on the lists, as well as the property description and value, whether it is personal or real. The commission will correct any errors in the books, and do whatever else is necessary to make the valuation comply with the provisions in Chapter 11 of the Code.

Questions concerning the taxability or classification of property are not to be considered or ruled upon by the commission in its function as a board of equalization and review.

In the event the assessed valuation of any property is increased by the board of equalization and review, at least five days notice in writing signed by the president of the commission must be given the property owner. In the event an "across the board" increase in assessments is made, notice shall be given through newspaper publication, as provided in the Code § 11-3-24.

A complainant appearing before the board of equalization and review is concerned with the assessed valuation placed upon his property, and the board has sole authority to adjust the assessed valuation on any property when they feel the existing assessment does not accurately reflect true and actual value, or is out of line in comparison with similar properties.

The board does not have the authority to adjust the appraised valuation of any property as calculated on the property record cards, which are a part of the county's reappraisal program administered by the State Tax Department. Adjustments to appraised valuations are to be made only by a representative of the State Tax Department who is assigned to, and will work closely with, the board during its sitting.

It is well to keep in mind that if an assessment is reduced without sufficient justification, a chain reaction can easily be started whereby other property owners will also want an unsupported reduction. An endless sequence is then commenced that will wind up in nothing but confusion and the loss of accurate and equitable assessments throughout the county.

If any taxpayer fails to appear before the county commission during this sitting, the right to request an assessment adjustment is waived for the current year, except for the right of appeal to the circuit court on the question of an assessment made without authority of law.

After the county commission completes its sittings as a board of equalization and review, a majority of its members are to sign a certification that the books represent the completed assessment of the county for that year. This should be done on or before February 28.

The land and personal books are then delivered to the assessor for the extending of levies as prescribed in Code § 11-3-19.

PROTEST TO ASSESSOR - APPEAL TO CIRCUIT COURT

At any time after the property is returned for taxation and up to and including the time when the property books are before the county commission for equalization and review, a taxpayer may apply to the assessor for information regarding the classification and the taxability of his property.

If the taxpayer is dissatisfied with the classification of his property, or if he believes that such property is exempt from taxation, then he shall file his objections in writing with the assessor. The assessor will either sustain the protest and make the proper corrections, or state the reasons for his refusal in writing if the taxpayer wants.

If the taxpayer requests, the assessor shall certify the question to the State Tax Commissioner in a statement sworn to by both parties.

If the parties cannot agree, this will be done in separate sworn statements giving a full description of the property and any other information which the tax commissioner may require. This may be done, nonetheless, if the assessor feels it necessary.

The tax commissioner will, as soon as possible on the receipt of the question, but in no case later than February 28, inform the assessor as to how the property will be treated.

The instructions issued and forwarded by mail to the assessor will be binding upon him, but either the assessor or the taxpayer may apply to the circuit court of the county for the review of the question of classification or taxability in the same fashion as is provided for appeals from the county commission in [§ 11-3-25] of the Code.

The tax commissioner will prescribe forms on which the questions will be certified, and he will have the authority to pursue any inquiry and obtain any information which he feels is necessary for the disposition of the issue. [§ 11-3-24a]

RELIEF IN COUNTY COMMISSION FROM ERRONEOUS ASSESSMENT

When the county commission grants relief to any applicant as to the taxes which are to be assessed to them either on land or personal property, an order will be made by the commission which exonerates the applicant from the payment of so much taxes as may be erroneously charged to him if they have not been paid. If they have been paid, the sum which was erroneously charged will be refunded.

The order will be delivered to the assessor, sheriff, or other collecting officer, and will restrain him from collecting the erroneous amount. Or, it will charge him to return the amount, if it has not already been charged to the county treasury.

In either case, when endorsed by the exonerated person, it will be a sufficient voucher entitling the officer to a credit for that amount in the settlement which he is required to make.

Changes in the land and/or property books after they have been certified by the board of equalization and review may be made only as the result of an appeal from the assessment to the circuit and/or Supreme Court. The only exception to this is the authority of the county commission to correct "erroneous assessments." Erroneous assessment is defined by § 11-3-27 as an error resulting from a clerical error or a mistake occasioned by an unintentional or inadvertent act as distinguished from a mistake growing out of negligence or the exercise of poor judgment.

PROGRAMS ADMINISTERED
BY TAX DEPARTMENT

GUIDE FOR ASSESSORS
JULY 1979

The following is a list of tax department personnel, addresses and telephone numbers.

David C. Hardesty, Jr.	State Tax Commissioner State Capitol Charleston, WV 25305	348-2501

Local Government Relations Division 348-3940
1615 Washington St., E., Charleston, WV 25311

John R. Melton	Director
Robert Hoffman	Deputy Director
Don Hebb	Tax Analyst - Mineral Appraisal

Property Appraisal Section

J. Michael Earley	Assistant Director
Wade Thompson	Administrative Assistant
Jack Reeves	Section Chief Mineral Mapping and Drafting

Internal Operations Section

Ron Preast	Assistant Director
Barbara Brunner	Section Chief - Real Estate Data System (computerized property record cards)
Wanda McConihay	Section Chief - Appraisal Processing (commercial, industrial appraisals and certification of values to counties)
Donna Mills	Section Chief - Countytax System
Joe Panetta	Chief Accountant - Public Utilities
Lawrence Smith	Office Manager (distribution of forms)

Chief Inspection Office

Gene Hill	Assistant Director
Mack Parsons	Administrative Assistant
Thelma Stone	Section Chief - (assessments, levies, and budgets)

IN-SERVICE TRAINING PROGRAMS AND STATE AND LOCAL MEETINGS

Code § 7-7-2 and § 11-2-7 authorizes and directs the state tax commissioner to establish in-service training programs and annual meetings for assessors and other elected officials. The date and place of the meetings is fixed by the tax commissioner and due notice of each meeting is given to the individual official.

The annual meeting for assessors is scheduled for a period of at least two days but not more than four and the program is of matters pertaining to assessments and work of the assessors. The actual and necessary expenses incurred by the assessor and not more than two deputies is paid out of the county treasury. The assessor is required to file an itemized statement, which shall be sworn to, with the clerk of the county commission before the payment is made.

In addition to the state tax commissioner's annual meeting, the assessor is required by Code § 11-2-7 to have two meetings with the deputy assessors between the first day of the assessment year and the twentieth day of January of the current year. The time and place of these meetings is designated by the assessor and all deputies are to be notified. The purpose is to secure uniform valuation of both real and personal property throughout the county, according to the true and actual value. The last meeting is to be held after the work of listing property has been completed. The property lists are to be examined thoroughly.

If the lists are found to be erroneous, either in the amount of property assessed to any person, firm or corporation, or in the value given to any item of property by the taxpayer, the list is to be revised and corrected by placing on the list any omitted property and giving to it, as well as other property listed at an incorrect value, the true and actual value according to the rule prescribed by law.

REAL ESTATE DATA SYSTEM

PRC SUBSYSTEM

The Property Record Card (PRC) was designed and implemented by the state tax department and the system has been fully functional since June of 1977.

Conversion of the real property information from typed and handwritten documents to computer readable form is the initial step to get each county on the system. Usually this step is initiated after the county has been reappraised, but conversion can begin at any time.

As a result of conversion, a set of computerized property record cards and an alpha/numeric cross-reference list of all parcels of real property and buildings on leased land are delivered to the county.

Changes to each county's master file may be initiated from the assessor's office or LGR appraisers to keep the information up-to-date. When changes are made, updated property record card(s) and reports are sent to the county.

In addition to providing required records to each county, the PRC System provides administrative reports and certification reports for state tax department use.

Current PRC System benefits include the following:

1. Security: In the past any destroyed or misplaced property record card necessitated a complete field appraisal since the existing property record cards had no backup. With PRC, reproduction of any or all cards within a county can be accomplished.

2. Exempt Property Reports: A report of all tax exempt real property for each taxing jurisdiction in a county is available.

The real property information converted for the PRC System could in the future provide the data for other projects such as:

1. Automated Valuation Estimates: With the establishment of the PRC Master File a valuable, computer readable data base is available for testing varied approaches to automated valuation.

2. Automated Sales Ratio Studies: With the minor addition of a verified sales report, automated Sales Ratio Studies are easily processed.

3. Research Reports: On request, reports concerning specific real property characteristics can be made available.

STATE-WIDE PROPERTY REAPPRAISAL PROGRAM

Chapter 18, article 9A, section 11 of the Code of West Virginia, as amended, relates to the computation of the local (county) share for the public school support program and the appraisal and assessment of property for ad valorem tax purposes. This legislation directs the state tax commissioner to make and maintain an appraisal of all nonutility property in each of the several counties of the state to be used as a guide and basis in the determination of assessed valuations. The statute further stipulates that an annual report of the current values of the several classes of property in each county shall be made to the legislature and state board of school finance no later than the first day of January each year.

In 1958, the West Virginia Legislature provided for a state-wide property reappraisal program to be administered at the state level. The legislation stipulated: "The tax commissioner shall make or cause to be made an appraisal in the several counties of the state of all nonutility real property and of all nonutility personal property which shall be based upon true and actual value. . ." For the purpose of carrying out this directive, the tax commissioner was authorized to employ professional appraisal firms and such assistance as available appropriations would permit.

As the appraisal of property in a county was completed, the materials were delivered to the assessor and county commission, in its capacity as a board of equalization and review, for use as a basis for assessment purposes in the ensuing years. The total assessed valuation in each of the four classes of property is required to be not less than 50% nor more than 100% of the appraised valuation of each class of property. Since, by law, both the assessed and appraised value of property is to be based upon the same concept - true and actual value - this has the effect of allowing a 50% tolerance between the assessor's and appraiser's judgment as to the actual value of each individual property.

Also stipulated is the provision that in any year in which the total assessed valuation fails to meet the minimum required ratio, the county commission is required to allocate to the county board of education a sufficient portion of its levy rate so that the tax yield to the board of education, based upon the application of the allowable school levy rates, defined in Code § 18-9A-11 will equal the amount of revenue that would have been received had the minimum requirement been met.

The original work was completed and in use in the 55 counties as of the assessment year beginning July 1, 1967. Approximate cost of the original work was ten million dollars, borne 90% by the State and 10% by the counties.

Present appraisal values are based on cost manuals which represent market values for the year the appraisals were made in the various counties. Actual property appraisal was begun in 1959 and completed in 1967. The State's economic growth influenced by interstate highways, Appalachian highways, and urban redevelopment, along with many other factors have brought about a change in property values that have made the original appraisal completely out of line with the present market value. Since 1959, building construction costs have increased by 86.3%; since 1967 costs have increased 127% through 1978.

Land values have dramatically changed during the period 1959 to 1979. The demand for homesites, mobile homesites, mobile home parks, commercial sites, and other land uses have increased considerably. Lots selling in 1965 for $300 are on today's market selling for $3,500 and up depending upon location. The trend toward mobile home living has increased homesite value for land that was once thought to have no utility. The directional growth of many of the towns and cities in the State have shifted to the suburban areas bringing about many changes in land value. Suburban shopping centers have caused considerable changes in the value of property in the urban area.

A completed appraisal program does not have a built-in life. Values of property change constantly and additions and removals are an everyday occurrence. Recognizing that the original work must be maintained, the 1962 legislature decreed: "Each year after completion of the property appraisal in a county the tax commissioner shall maintain the appraisal by making or causing to be made such surveys, examinations, audits, maps and investigations of the value of the several classes of property in each county which should be listed and taxed under the several classifications and shall determine the appraised value thereof."

The legislature provided funding for industrial reviews and the State Tax Department assumed this responsibility statewide in July 1971. Industrial plants for all 55 counties were reviewed and certified by May 1976. An examination of this program indicates that these appraisals can be made by state employed appraisers rather than private firms resulting in more current appraisals, less cost, and employment for West Virginians. This program will be maintained on a 4½ year cycle.

All programs of maintenance and reappraisal provide each county assessor two major products:

(1) a set of tax maps of the entire county showing the location and ownership of each surface parcel of property along with dimensions and other pertinent data;

(2) a set of property record cards and booklets covering each parcel of nonutility real property as well as industrial machinery and equipment and commercial furniture and fixtures. These materials contain a detailed description of land and improvement and the various personal property items along with the computations used in arriving at the property's value.

Reappraisal has had the effect of providing a foundation for equalization between individual assessments as well as a more realistic and broadened property tax base in each county. Through its use, the county assessors have achieved a progressive improvement in property tax administration throughout the state.

Prior to this revaluation, assessors throughout the state had worked under burdensome restrictions. In many cases, their budget allowed little more than roll copying from year to year. This together with the general expansion in the economy since 1945 resulted in:

A lack of equalization among individual properties.
Numerous inequities in valuations.
An increasing number of omitted properties.
A progressive sagging of assessed values below market.
A gradual deterioration in the tax base.
An insufficiency of records in the assessor's office.

Reappraisal furnished each assessor information on all property within his county which, together with the other data gathered and compiled by his office, gives a foundation for realistic conclusions in the determining of property valuation.

It also has had the effect of providing a basis for equalization between individual assessments as well as providing a more realistic and broadened property tax base in each county.

The assessor's determination of the true and actual value of individual properties through use of the appraisal records as a guide, as well as a consideration of all other pertinent factors, is an opinion objectively determined. In addition to the level of value itself, the use of the same yardsticks and judgement procedures on all properties is a must.

While the assessor is in no manner expected to surrender his discretionary powers in the making of assessments, he does have the right and responsibility to use the information available from reappraisal materials in his determination.

The appraised value should not be the sole basis for the fixing of the assessed value of an individual property. Other factors should and must be considered by the assessor.

However, for the first time each assessor has sufficient data on all property within his county to make authentic valuations for assessment purposes.

Chapter 18, Article 9-A, Section 11 of the Code of West Virginia also specifies that the local share for support of the public school program of each county shall be computed by the state board of school finance on the basis of the most recent annual survey of property valuations by the tax commissioner. The applicable language of the statute states:

> "On the basis of the most recent survey of property valuations in the state, completed as to all classes of property in all counties determined by the tax commissioner under present or former provisions of this article, the state board shall for each county compute by application of the levies for each general current expense purposes, as defined in section two (2) of this article, the amount of revenue which such levies would produce if levied upon one hundred percent of the appraised value of each of the several classes of property contained in the report or revised report of such value, made to it by the tax commissioner as follows:

(1) The state board shall first take 97½% of the amount ascertained by applying these rates to the total assessed public utility valuation in each classification of property in the county.

(2) The state board shall then apply these rates to the appraised value of other property in each classification in the county as determined by the tax commissioner and shall deduct therefrom 5% as an allowance for the usual losses in collections due to discounts, exonerations, delinquencies and the like. 50% of the amount so determined shall be added to the 97½% and ½% of public utility taxes computed as provided above and this total shall be the local share of the particular county."

The levies to be used per $100 valuation in this calculation as stipulated in Code § 18-9A-2 are:

Class I - 19.6¢
Class II - 39.2¢
Class III - 78.4¢
Class IV - 78.4¢

Approximately 99½% of the property tax revenue remains in the county for local use. The average allocation is for:

School Purposes	-	70½%
County Purposes	-	21 %
Municipal Purposes	-	8 %
State Purposes	-	½%
Total		100 %

SURFACE MAPPING

Surface tax maps are the most important aspect of the property appraisal program simply because the property must be identified as to location and mapped prior to the real property appraisal. Once the base map has been established, it is a matter of maintenance to keep the map current with the latest transactions within a county. Without current mapping the real estate appraiser cannot produce efficiently and the assessor has no physical inventory of the properties within his jurisdiction.

November 20, 1973, the State Tax Department established "Tax Mapping Procedures" which will ultimately create a consistent surface mapping program throughout the entire state. With approximately 20,000 maps, it will take time to revise any maps that don't comply with the established procedures.

All tax maps are available to be viewed by anyone at the appropriate county courthouse. The only time these maps cannot be seen is when they are being used by the county or state employees.

Certain restrictions pertaining to tax maps as stated in Chapter 18 of the West Virginia Code is as follows:

> "All microfilm, photography, and original copies of tax maps created under the provisions of this section are the property of the State of West Virginia and the reproduction, copying, distribution, or sale of such microfilm, photography, or tax maps or any copies thereof without the written permission of the State Tax Commissioner is prohibited. Any person who shall violate the provisions of this paragraph shall be guilty of a misdemeanor."

The necessary information required to purchase tax maps, is the county name, district or corporation name, and map number. In acquiring copies of tax maps there is a choice of three scales available from the State Tax Department.

SURFACE MAPS

Rural areas	- 1" = 400'	- $ 5.00 per sheet + 3% tax.
Rural areas	- 1" = 2000'	- $100.00 per sheet + 3% tax.
Corporations and congested areas	- 1" = 100'	- $ 5.00 per sheet + 3% tax.

MINERAL MAPS

All areas	- 1" = 2000'	- $100.00 per sheet + 3% tax.

At this time there are 32 counties that the coal mineral maps have been completed in and they are as follows:

Barbour, Boone, Braxton, Brooke, Calhoun, Clay, Doddridge, Fayette, Grant, Greenbrier, Harrison, Lewis, Lincoln, Logan, Marion, Marshall, McDowell, Mercer, Mineral, Mingo, Monongalia, Nicholas, Ohio, Pocahontas, Preston, Raleigh, Summers, Taylor, Tucker, Upshur, Webster, and Wyoming.

All public service commissions, county, state and federal surveyors may acquire maps for $1.00 per sheet for the 1" = 400' or 1" = 100' and $10.00 per sheet for the 1" = 2000' maps. All orders must be requested in the form of a written request and/or in person and must be prepaid before any copies are run for distribution. All maps are 24" x 36" in size.

Copies of mineral maps and surface tax maps are available from the State Tax Department, Local Government Relations Division, 1615 Washington Street, East, Charleston, West Virginia 25311 or phone 348-3940.

COUNTYTAX
COMPUTERIZED PROPERTY TAX COLLECTION SYSTEM

Currently available to all County governments throughout the State of West Virginia is a computerized property tax collection system. This function of the Local Government Relations Division of the Tax Department is administered by the Countytax Section which serves as liaison or coordinator for the activities of all users in accessing their respective computer files.

The system is optional to all county governments, and a fixed charge per account or entry on the books (both real and personal) is charged to cover costs of operating the system. This rate is set at $0.20 (twenty cents) per account per year billable at $0.05 (five cents) per quarter. This rate is subject to increase, however.

Products of the system include:

1. Real Property Tax Books
2. Personal Property Tax Books
3. Tax Receipts
4. Tax Statements
5. Initial Assessment Roll
6. Budget Report
7. Assessor's Recap
8. Various other reports for control and information purposes.

The benefits of the system are briefly summarized in the above listing, and a much more comprehensive benefit list can be obtained by contacting the Countytax Section.

There are currently ten (10) member counties that have joined the system since it's inception in 1971. These counties are:

Berkeley	Mercer
Fayette	Mineral
Harrison	Ohio
Kanawha	Preston
Mason	Raleigh

Historically, the State of West Virginia has absorbed the cost of conversion for each new member. Legislative, Executive, or Administrative action which necessitates changes in the system are fully absorbed by the State, and all forms, reports, etc., are designed to fully implement these changes when they occur.

Annual meetings are conducted for all member counties to review systems' problems, user problems, and changes that have been made to better the system.

Informal comprehensive presentations of the system and it's benefits are available on request by simply contacting the Local Government Relations Division.

Up-to-date costs for conversion, operation, and maintenance of the system can be obtained by contacting the Countytax Section.

FORMS AND INSTRUCTIONS FOR ASSESSORS

Code § 11-1-6 provides for the tax commissioner to prepare and furnish the forms for the personal property books, the land books, and assessment forms for the assessors to furnish to persons chargeable with taxes. The assessor is also furnished recapitulation forms that are completed and placed in the back of each real and personal property book. One recapitulation for personal property and one for real estate is compiled and forwarded to the state tax department to be used in statewide statistics.

The assessor may, however, use printed forms other than those furnished by the tax commissioner if the forms have been approved by the tax commissioner and the county commission will authorize the purchase of the forms.

It is the duty of the tax commissioner to give instructions by letter or printed circulars to the assessors respecting the assessor's duties, and if the assessor fails to obey such instructions, as long as they are not contrary to law, he, or she, shall forfeit not less than one hundred dollars nor more than five hundred dollars, and upon conviction, shall be removed from office.

Assessment forms used by county assessors are obtainable from the Local Government Relations Division. However, a few guidelines must be exercised to insure that each county will have an adequate supply for each fiscal year. Listed below are these guidelines:

1. When a request for assessment forms is received by the county assessor (sample of form attached) it should be filled out and returned as soon as possible.

2. Retain a copy of the request for use the following year. There should be no great fluctuation in usage.

3. Due to the fact that UPS is utilized in delivering the forms, shipping must start by March 15th. If, however, this does not meet with your approval indicate so on your request for forms.

4. When your forms are received, open them immediately and fill out the check-off sheet and return it to Local Government Relations Division. (This pertains only to forms sent from a request sheet.) If there is a discrepancy indicate it on the returnable check-off sheet. By doing this immediately upon receipt of your order, you will eliminate the possibility of receiving the wrong order, and then not having enough time to correct the situation.

5. Any forms needed throughout the year may be obtained by either writing or calling Local Government Relations Division and asking for the office manager. However, the bulk of your usage should be indicated on your request sheet.

6. If you have not received your shipment, as requested on the order form, by July 1 of each year, contact the Local Government Relations Division, and ask for the office manager.

As you can imagine the task of providing forms to the counties is one that requires a harmonious relationship between the assessor's office and the tax department.

SAMPLE

LGR 12:104

LOCAL GOVERNMENT RELATIONS DIVISION
STATE TAX DEPARTMENT
1615 WASHINGTON STREET, EAST
CHARLESTON, WEST VIRGINIA 25311

REQUEST FOR ASSESSMENT FORMS

_____ 19__

TO ALL COUNTY ASSESSORS:

Please list below the number of forms furnished by this office that you will need for the assessment year ____. This should be done as soon as possible in order that there will be sufficient time to have them printed and delivered to you.

LGR. NO.	FORM NAME	QUANTITY
12:00	Fleet Vehicle Report	
12:01	Individual Personal Property Return	
12:02	Return of Unincorporated Companies	
12:03	Return of Incorporated Companies	
12:03A	Improvements of Coal Operators	
12:03B	Tangible Personal Property-Coal Operators	
12:03C	Notification of Action by Assessor	
12:04	Banks and Industrial Loan Companies	
12:04A	B & L and Federal S & L Company Return	
12:06	Land Book Sheets "A" "B" "C"	
12:08	Recapitulation of Real Estate	
12:09	Personal Property Book Sheets	
12:10	Recapitulation of Personal Property	
12:75	Notice of Property Improvement	
12:75A	Application for Review of Assessments	
STCO 5	Commercial Orchard Return	
12:06 HSL	Homestead Exemption Letter	
12:06 HSC	Homestead Exemption Card	

_____
ASSESSOR

_____
COUNTY

The following is a list of the forms that can be ordered from the tax department:

LGR 12:00	Itemized Fleet Vehicle Report
LGR 12:01	Individual Personal Property Return
LGR 12:01 R	Individual Real Property Return
LGR 12:02	Unincorporated Businesses Personal Property Return
LGR 12:03	Incorporated Firms, Mines & Mfg. PP Return
LGR 12:03 A	Listing Improvements of Coal Operators
LGR 12:03 B	Tangible Personal Property - Coal Operators
LGR 12:03 C	Notification to Taxpayer of Action
LGR 12:04	Banks & Industrial Loan Companies Return Building & Loan & Federal Savings & Loan Return
LGR 12:06 A	Land Book Sheets
LGR 12:06 B	Land Book Sheets
LGR 12:06 C	Land Book Sheets
LGR 12:06 1A	Request for Real Estate Change (pink card/carbonized)
LGR 12:06 4A	Map Change Card (two types)
LGR 12:06 HSC	Application for Homestead Exemption (card)
LGR 12:06 HSL	Application for Homestead Exemption (sheet)
LGR 12:09	Personal Property Book Sheets
LGR 12:75	Notice of Building or Real Property Improvement
LGR 12:75 A	Application for Review of Property Assessment

STCO Form No. 5	Commercial Orchard Owners Return

LGR 501	Real Property File Content Sheet
LGR 502	Personal Property File Content Sheet
LGR 503	Real Estate Tax Book Sheet
LGR 504	Personal Property Tax Book Sheet
LGR 505	Tax Statement
LGR 506	Personal Property Tax Ticket
LGR 507	Real Property Tax Ticket

The LGR 500 Forms are used only by the counties that are computerized through the Countytax System.

SUBJECT INDEX

HOW TO USE THE SUBJECT INDEX:

This Index is made up of the many subjects which have been covered in the Guide for Assessors. The subjects are listed alphabetically for speed and convenience in locating a specific subject.

After the subject heading the following coding references apply:

(1) The first number represents the chapter:

1 - ASSESSMENT ADMINISTRATION IN GENERAL
2 - ASSESSMENT PROCEDURES
3 - ASSESSMENT OF REAL PROPERTY
4 - ASSESSMENT OF PERSONAL PROPERTY
5 - ASSESSMENT OF PROPERTY OWNED BY PUBLIC UTILITIES
6 - ASSESSMENT OF SPECIALIZED PROPERTIES
7 - VALUATION GUIDES FOR NATURAL RESOURCES
8 - CLASSIFICATION AND EXEMPTIONS OF PROPERTY
9 - APPEAL PROCEDURES
10 - PROGRAMS ADMINISTERED BY THE STATE TAX DEPARTMENT
11 - SUBJECT INDEX

(2) The second number represents the page number of that chapter. Each chapter is numbered consecutively.

(3) For example, to find the article on EXONERATIONS you would look under Chapter Two, page nine (9).

SUBJECT INDEX

THE FOLLOWING CHAPTERS OF THE WEST VIRGINIA CODE ARE REFERENCED IN THE "GUIDE FOR WEST VIRGINIA ASSESSORS"

CHAPTER 7	COUNTY COURTS AND OFFICERS.
ARTICLE 7	TRAINING PROGRAMS FOR COUNTY EMPLOYEES, ETC.; COMPENSATION OF ELECTED COUNTY OFFICIALS; COUNTY ASSISTANTS, DEPUTIES AND EMPLOYEES, THEIR NUMBER AND COMPENSATION.
7-7-2	Establishment of county in-service training programs.
7-7-7	County assistants, deputies and employees; their number and compensation; county budget.
7-7-10	Affidavits acknowledging receipt of compensation.
7-7-16	Mileage allowance for county officials, their assistants, deputies and employees.
7-7-19	Compliance with Economic Stabilization Act of 1970.
CHAPTER 8	MUNICIPAL LAW, MUNICIPALITIES AND COUNTIES; INTERGOVERNMENTAL RELATIONS.
ARTICLE 19	MUNICIPAL WATERWORKS SYSTEMS.
ARTICLE 20	COMBINED WATERWORKS AND SEWERAGE SYSTEMS.
8-19-4	Estimate of cost; ordinance for issuance of revenue bonds; interest on bonds; rates for services.
8-20-5	Amounts, negotiability and execution of bonds; refund of outstanding obligations or securities by sale or exchange of bonds.
CHAPTER 11	TAXATION.
ARTICLE 2	ASSESSORS.
11-2-5	Salaries paid out of county fund.
11-2-5a	Additional compensation; additional duties.
11-2-7	State and local meetings.
ARTICLE 3	ASSESSMENTS GENERALLY.
11-3-1	Time and basis of assessments; true and actual value; default; reassessment; special assessors.
11-3-2	Canvass by assessor; lists of property.
11-3-2a	Notice of increased assessments required; exceptions to notice.
11-3-3a	Building or real property improvement notice; notice filed with assessors; when not required; penalties.
11-3-5	Correction of previous property books; entry of omitted property.
11-3-6	Statements of assessed valuations for municipalities and boards of education; extension of levies.
11-3-7	Fixtures and machinery.
11-3-9	Property exempt from taxation.
11-3-12	Assessment of corporate property; reports to assessor by corporations.
11-3-14	Assessment of stock and realty of banks.
11-3-14a	Taxation of building and loan associations and federal savings and loan associations.
11-3-15	Assessment of capital used in trade or business by natural persons.
11-3-19	Property books; time for completing; extension of levies; copies.
11-3-24	Review and equalization by county court.
11-3-25	Relief in circuit court against erroneous assessment.
11-3-27	Relief in county court from erroneous assessment.
ARTICLE 4	ASSESSMENT OF REAL PROPERTY.
11-4-3	Definitions.
11-4-9	Assessment of different estates; undivided interests.
11-4-14	Assessment of lands lying in more than one county.
11-4-17	Consolidation of contiguous tracts or mineral or timber interests.
11-4-18	Division or consolidation of tracts for segregation.
11-4-21	Five thousand dollar assessed value exemption for persons over sixty-five and otherwise qualified; ascertainment of eligibility; and supplying of instructions and forms and promulgation of regulations.
ARTICLE 5	ASSESSMENT OF PERSONAL PROPERTY.
11-5-1	What personal property taxable.
11-5-2	Personal property books.
11-5-3	Definitions.
11-5-4	In what district personalty assessed.
11-5-5	Valuation of credits and investments.
11-5-6	Property or stock of corporations.
11-5-8	Assessment of transients selling goods.
11-5-10a	Release of taxes, etc., on bank deposits and money not assessed prior to November 4, 1958.
11-5-11	Mobile homes used by the owner for residential purposes and located on land not owned by the mobile home owner.
11-5-12	Mobile homes situate upon property owned by a person other than owner of mobile home.
ARTICLE 6	ASSESSMENT OF PUBLIC SERVICE CORPORATIONS.
11-6-1	Return of property to board of public works.
11-6-9	Compelling such return; procuring information and tentative assessment by tax commissioner.
11-6-11	Valuation of property by board.
11-6-18	Payment of assessment by owner or operator.
11-6-23	Lien of taxes; notice; collection by suit.
ARTICLE 6A	POLLUTION CONTROL FACILITIES TAX TREATMENT.
11-6A-1	Declaration of policy.
11-6A-2	Definition.
11-6A-3	Tax treatment of pollution control facilities.
11-6A-4	Regulations.

CHAPTER 11 TAXATION (continued)

ARTICLE 8 LEVIES.
11-8-5 Classification of property for levy purposes.
11-8-6b Maximum levies on each classification by county courts; order of levies.
11-8-8 Levies by board of public works; certification.
11-8-9 Meetings of local levying bodies.
11-8-10 Levy estimate by county court; certification to tax commissioner and publication.
11-8-10a Adjourned session of county court to hear objections to proposed levies; approval of estimate and levy by tax commissioner; first levy for bonded indebtedness, second for indebtedness not bonded, then for current expenses.
11-8-12 Levy estimate by board of education; certification and publication.
11-8-14 Levy estimate by municipality; certification to tax commissioner and publication.
11-8-14a Adjourned session of municipal governing body to hear objections; approval of levies by tax commissioner; first levy for bonded indebtedness and indebtedness not bonded, then for current expenses.
11-8-16 What order for election to increase levies to show; vote required; amount and continuation of additional levy; issuance of bonds.

ARTICLE 25 TAX RELIEF FOR ELDERLY HOMEOWNERS AND RENTERS.
11-25-1 Declaration of purpose; rule of construction.
11-25-2 Definitions.

CHAPTER 11A COLLECTION AND ENFORCEMENT OF PROPERTY TAXES.

ARTICLE 1 ACCRUAL AND COLLECTION OF TAXES.
11A-1-2 Lien for real property taxes.
11A-1-3 Accrual; time for payment; interest on delinquent taxes.
11A-1-6 When collection to commence.
11A-1-7 No collection of current taxes until delinquent taxes are paid.
11A-1-11 Payment of fiduciary.
11A-1-14 Payment by sheriff into state treasury.

ARTICLE 2 DELINQUENCY AND METHODS OF ENFORCING PAYMENT.
11A-2-3 Distraint.
11A-2-10a Notice of delinquency.
11A-2-14 Correction of delinquent lists by county court; certification to auditor, recordation.

ARTICLE 3 SALE OF LAND FOR TAXES.
11A-3-2 Second publication of list of delinquent real estate; notice.
11A-3-4 Sale by sheriff.
11A-3-14 Auditor to report redemptions to county officers; disposition of redemption money; credit of state taxes to proper fund.

CHAPTER 13 PUBLIC BONDED INDEBTEDNESS.

ARTICLE 1 BOND ISSUES FOR ORIGINAL INDEBTEDNESS.
13-1-1 Political divisions authorized to issue and sell bonds.
13-1-3 Amount and purpose of indebtedness for which bonds may be issued.

ARTICLE 2A REVENUE BOND REFINANCING.
13-2A-12 Duties of public body and officers as to bonds and rights of bondholders.

ARTICLE 2C INDUSTRIAL DEVELOPMENT AND COMMERCIAL DEVELOPMENT BOND ACT.
13-2C-1 Short title.
13-2C-15 Exemption from taxation.

CHAPTER 16 PUBLIC HEALTH.

ARTICLE 15 STATE HOUSING LAW.
16-15-14 Tax Exemptions.

CHAPTER 18 EDUCATION.

ARTICLE 9A PUBLIC SCHOOL SUPPORT.
18-9A-2 Definition; effect of increases given in 18A-4-2a.
18-9A-4 Foundation allowance for professional educators.
18-9A-11 Computation of local share; appraisal and assessment of property.

ARTICLE 17 WEST VIRGINIA SCHOOLS FOR THE DEAF AND BLIND.
18-17-6 Registration of deaf and blind by assessors.

CHAPTER 19 AGRICULTURE.

ARTICLE 20 DOGS.
19-20-1 Dogs subject to taxation; declared to be personal property.
19-20-2 Collection of head tax on dogs; duties of assessor and sheriff; registration of dogs; disposition of head tax; taxes on dogs not collected by assessor.
19-20-11 Assessment of dogs as personal property.
19-20-12 Dogs protected by law; unlawful killing thereof; aggrieved owner's remedy; penalties.

CHAPTER 39 RECORDS AND PAPERS.

ARTICLE 1 AUTHENTICATION AND RECORD OF WRITINGS.
39-1-13a Consolidation order book.