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



NOTICE OF EMERGENCY RULE

RULE TITLE: Guidelines For Assessors To Assure Fair And Uniform Nonutility Personal Property Values

The attached rule is filed as an Emergency Rule. The facts and circumstances constituting the emergency are as follows:

The West Virginia Legislature on May 22, 1986 passed House Bill 153 which upon completion of certain activities by specified dates authorizes implementation of the First Statewide Reappraisal. Following is a listing of the activities which must occur.

(1) The Tax Commissioner must compile a list for each county of all separately assessed property which was subject to the appraisal, such list must be delivered to assessors, sheriffs and county commissions on or before June 15, 1986.

(2) Upon receipt of the list, the sheriff shall forthwith give notice to property owners that the appraisal is complete and the results are available in the assessor's office.

(3) The Tax Commissioner must mail real property valuation notices and notices of right to a hearing to property owners on or before August 15, 1986. For those property owners whose address is unknown to the Tax Commissioner, the sheriff must provide an appropriate mailing address on or before July 1, 1986.

(4) All petitions for hearings must be filed on or before September 2, 1986.

(5) All hearings and determinations must be rendered by December 1, 1986.

Both prior to and in conjunction with the foregoing, W. Va. Code § 11-1A-29a requires the assessor to review all personal property valuations in order to determine the accuracy of the values. To assist this process, the Tax Commissioner is required to provide guidelines and instructions in order that the review process is completed in sufficient time to allow the property owner to file a petition for a hearing on or before September 2, 1986.

These regulations comprise the required guidelines, and it is necessary for them to become effective prior to when the Legislature next meets.

Michael E. Caryl
State Tax Commissioner

EMERGENCY LEGISLATIVE
WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX DEPARTMENT
Chapter 11-1A
Series IV
(1986)

Filed: June 30, 1986

Guidelines For Assessors To Assure Fair And Uniform Nonutility Personal Property Values

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

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

# EMERGENCY LEGISLATIVE
# WEST VIRGINIA ADMINISTRATIVE REGULATIONS
# STATE TAX DEPARTMENT
## Chapter 11-1A
## Series IV
## (1986)

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(1986)

Filed: June 30, 1986

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Section 1. General.

1.1 Type of Regulation. -- These regulations are emergency legislative regulations as defined in W. Va. Code §§ 29A-1-2(d) and 29A-3-15.

1.2 Scope. -- These regulations relate to W. Va. Code § 11-1A-29a and provide guidelines to the several county assessors so as to ensure fair and uniform values of nonutility personal property within each county and among all counties in this State.

1.3 Authority. -- These emergency legislative regulations are issued under the authority of W. Va. Code §§ 11-1A-29a and 29A-3-15.

1.4 Filing Date. -- These emergency legislative regulations were promulgated and filed in the State Register on June 30, 1986. A public comment period will end on August 15, 1986 at 5:00 p.m.

1.5 Effective Date. -- These emergency legislative regulations become effective immediately upon filing.

1.6 Citation. -- These emergency legislative regulations may be cited as W. Va. Emerg. Leg. Reg. 11-1A, Ser. IV, § ___________, page _____ (1986).

Section 2. Definitions. -- As used in this rule and unless the context clearly requires a different meaning, the following terms shall have the meanings ascribed herein, and shall apply in the singular or in the plural.

2.1 Appraisal or Appraisement, the Appraisal or the Appraisement. -- The terms "the appraisal" or "the appraisement", "appraisal" or "appraisement" shall mean the appraisement of property which was made or performed following the adoption of and pursuant to the amendment to Article X, Section 1b of the Constitution of West Virginia adopted in the year one thousand nine hundred eighty-two and also pursuant to article one-a of this chapter, and any modifications and revisions made thereto prior to the effective date of this article, subject however, to those exemptions subsequently granted by the amendments to Section 1a of said Article X of the Constitution adopted in the year one thousand nine hundred eighty-four.

2.2 Assessed Property or Taxable Property. -- The terms "assessed property" or "taxable property" shall mean and include all real estate and personal property or interests therein which were required to be appraised pursuant to Article X, Section 1b of the Constitution of this state, as amended in the year one thousand nine hundred eighty-two (except as may be exempted from ad valorem taxation by the provisions of Article X, Section 1a of the Constitution of this state as amended in the year one thousand nine hundred eighty-four) and any statute or statutes subsequently enacted which would implement such amendment and, with respect to real property, any and all improvements or structures thereon or attached thereto.

2.3 Assessed Value. -- The term "assessed value" shall mean any item of property is its assessed value after the certification of the first statewide reappraisal and shall be sixty percent of its appraised value of such item of property regardless of its class or species, except as hereinafter specifically provided in this article.

2.4 Electronic Data Processing System Network. -- The words "electronic data processing system network" and "network" shall mean the statewide electronic data processing system network required by W. Va. Code § 11-1A-21.

2.5 Intangible Personal Property. -- The words "intangible personal property" and "intangible property" shall have the same meaning ascribed to them in Section 11.11 of these regulations. See W. Va. Leg. Reg. 11-1A, Series IA, § 11.11(f)(12), page 148 (1984).

2.6 Personal Property. -- The words "personal property" as used in this rule, shall include all fixtures attached to land (if not included in the valuation 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); and all notes, bonds, and accounts receivable, stocks and other similar intangible property that are subject to ad valorem property taxes. See W. Va. Code § 11-5-3.

2.7 Property. -- The term "property" shall mean and include both real and personal property, tangible as well as intangible, unless the context in which the term is used clearly requires a less inclusive meaning.

2.8 Protestor. -- The term "protestor" shall mean any taxpayer of ad valorem property tax in any West Virginia county who petitions the county commission to hold a hearing to hear challenges to the appraisal of property.

2.9 Tax Commissioner. -- The term "Tax Commissioner" shall mean the State Tax Commissioner of West Virginia or his delegate and the mailing address for the Tax Commissioner's office is: P. O. Box 2389, Charleston, WV 25328.

2.10 Value, Market Value, And True And Actual Value. -- The terms "value", "market value" and "true and actual value" shall have the same meaning and shall mean the price at or for which a particular parcel or species of property would sell if it were sold to a willing buyer by a willing seller in an arms length transaction without either the buyer or the seller being under any compulsion to buy or sell: Provided, that in determining value, primary consideration shall be given to the trends of price paid for like or similar property in the area or locality wherein such property is situate over a period of not less than three nor more than eight years next preceding the base year and in the case of a farm or farms shall be determined assuming such land is being used for farming purposes. In addition, the commissioner may, for purposes of appraisement of any tract or parcel of real property, or chattels, real or other species of property, real or personal, take into account one or more of the following factors: (1) The location of such property; (2) its site characteristics; (3) the ease of alienation thereof, considering the state of its title, the number of owners thereof, and the extent to which the same may be the subject of either dominant or servient easements; (4) the quantity of size of the property and the impact which its sale may have upon surrounding properties; (5) if purchased within the previous eight years, the purchase price thereof and the date of each such purchase; (6) recent sale of, or other transactions involving, comparable property within the next preceding eight years; (7) the value of such property to its owner; (8) the condition of such property; (9) the income, if any, which the property actually produces and has produced within the next preceding eight years; and (10) any commonly accepted method of ascertaining the market value of any such property, including techniques and methods peculiar to any particular species of property if such technique or method is used uniformly and applied to all property of like species.

Section 3. Assessor's Activities.

3.1 Responsibilities Of The Assessor. -- It is the duty of the several county assessors, sheriffs, county commissions, and Tax Commissioner, to expend the maximum efforts to assist in ascertaining the true and actual value of all nonutility personal property as of the base year of 1983.

3.1.1 It also is their individual and collective duty to see to the proper and fair valuation of property within their respective counties in order to accomplish the objective of equal and uniform valuation for property tax purposes..

3.1.2 It is the responsibility and duty of each county assessor to see to the proper and accurate valuation of all nonutility personal property appraised pursuant to West Virginia Code § 11-1A-1 et seq.

3.2 Personal Property Review Guidelines. -- The State Tax Commissioner shall provide assessors with a list of all nonutility personal property. The assessor shall review this list and the appraised values therein and make such adjustments as will render the appraisal equal and uniform.

3.2.1 In order to make appropriate determinations so as to ensure an equal and uniform appraisal, the assessor should consider all available information to include but not be limited to the following items:

3.2.1.a Properly completed personal property returns filed by business property owners containing information with respect to items of personal property and value as of each July 1 assessment day, inclusive of July 1, 1983, preceding and succeeding years. These returns will provide comparative information as returns by the property owner relative to the true and actual value of the property as of each assessment day.

3.2.1.b Tax Department appraisals indicating the opinion of the Tax Department concerning the true and actual value of personal property as of a particular day. Since appraisals available from the Tax Department may vary with regard to the year upon which the estimate of value is based, assessors should be mindful that the objective of their statutory responsibility involves the determination of value as of 1983.

3.2.1.c Appraisal performed by the assessor' office indicating the true and actual value of personal property as of the date of the appraisal.

3.2.1.d Information involving estimates of value in addition to property returns, supplied by property owners. This information may consist of sale prices of individual properties or book values as indicated on the books and records of the business being appraised.

3.2.1.e Any financial statements made available by the business that would tend to indicate the value attributable to nonutility personal property assets of the business.

3.2.1.f Information obtained with respect to the nonutility personal property of a business as a result of a canvass conducted by the assessor's office through routine annual assessment activities.

3.2.1.g Information contained on the personal property books of the county indicating the assessed value of personal property. Care must be taken to insure that the assessed value contained on the property books is converted to an estimate of market value for ensuring a fair comparison.

3.2.2 In addition to the foregoing sources of value information, assessors are encouraged to communicate with each other concerning information which may relate to similar items located in and assessed throughout the several counties of the State. Assessors may further accept and solicit information with respect to value from other county offices and any other source where information relevant to determining the 1983 market value of property for appraisal purposes may reside.

3.2.3 Initial Appraisals -- Assessors judgment shall be weighed against the appraised value provided previously evidencing the initial appraised value of the statewide reappraisal. Changes in value based upon the assessor judgment will be made to the initial appraisal. In instances where no change is made by the assessor to an appraisal previously supplied evidencing a 1983 market value estimate, it will be presumed that the initial appraisal as provided is correct for purposes of the statewide reappraisal and will be used for determining property values for the first year of the statewide reappraisal, absent any change in circumstances involving the property subsequent to the base year affecting the value.

3.2.4 Field canvass. -- To the extent that resources permit, assessors are encouraged to canvass those business personal property accounts located in their county where information available is, in the judgment of the assessor, insufficient to form an opinion concerning the 1983 market value for appraisal purposes. A detailed inventory of the personal property should be obtained form the property owner.

3.3 Posting Of New Values. -- The assessor shall post any change in the value of any item of personal property to the county personal property appraisal list previously supplied by the Tax Commissioner.

3.3.1 The assessor shall proceed with all deliberate speed in the task of reviewing personal property values. In those instances where the assessor believes that the value contained in the initial appraisal is incorrect when compared to the estimate of value derived through the assessors efforts, the assessor shall provide or cause to be provided a notice of the new appraised value of personal property to the current owner thereof. This notice shall state the property identification number, the tax class, the owner's name, the old appraised value and the new appraised value. This notice should further advise the property owner of the appeal rights provided in accordance with W. Va. Code § 11-1B-1 et seq., and it shall allow sufficient opportunity to determine whether appeal to the county commission is appropriate.

3.3.2 The assessor shall make every effort to provide such notice to the current property owner by August 15, 1986, in order that the property owner may file a petition for review of the valuation with the county commission on or before September 2, 1986. If the notice is received by the property owner on or after August 20, 1986, the property owner shall be provided from the date of such late notice a two week time period within which to file a petition for review; provided, however, that in no event may such petition for review be filed after September 15, 1986. If subsequent to September 2, 1986 or in the event of a late notice the running of the two week time period, the property owner discovers new information which will affect the property valuation, he may file a petition for review in accordance with the requirements and procedures provided in W. Va. Code § 11-1B-15.

3.3.3 Defense Of Value. -- The assessor shall be available to provide information with respect to the value of personal property subject to administrative appraisal review board activities when requested by the State Tax Commissioner, the property owner, the county commission, or other interested parties. The assessor may further provide assistance and information to the county commission with respect to any value resulting from the statewide property reappraisal, including those estimates of value of nonutility personal property provided by the assessor.

3.3.4 Notice Of Change Listing. -- The assessor shall prepare a list of personal property appraisal changes resulting from the required notice. This list shall indicate the owner, property identification number, and old and new appraised value. The assessor shall supply this list to the Tax Commissioner no later than October 1, 1986.

Section 4. Tax Commissioner Activities

4.1 Responsibilities Of The Tax Commissioner.

4.1.1 The Tax Commissioner shall review each assessor's work to ensure that guidelines and instructions developed by the Tax Commissioner were uniformly followed.

Section 5. Rights To A Hearing

5.1 Who Has A Right To A Hearing. -- The taxpayer, Tax Commissioner and protestor may each appeal the assessor's decision on the value of personal property pursuant to the procedures provided in W. Va. Code § 11-1A-1 *et seq.* and 11-1B-1 *et seq.*

EMERGENCY LEGISLATIVE
WEST VIRGINIA ADMINISTRATIVE REGULATIONS
STATE TAX DEPARTMENT
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Guidelines For Assessors To Assure Fair And Uniform Nonutility Personal Property Values

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(Plus all the volunteer help we can get)

August 11, 1986

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Tax Department

RULE: Series 4 and 5 Guidelines for Assessors to Assess Fair and Uniform Nonutility Personal Property Values; Additional Review and Implementation of Property Appraisals New Rule Series.

DATE FILED AS AN EMERGENCY RULE: June 30, 1986

DECISION NO. 13-86

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.

Ken Hechler
KEN HECHLER
Secretary of State

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE Aug 11, 1986
ADMINISTRATIVE LAW DIVISION

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# STATE OF WEST VIRGINIA

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(Plus all the volunteer
help we can get)

DECISION

Emergency Rule Decision
(ERD 13-86)

AGENCY: Tax Department
RULE: Series 4 and 5 Guidelines for Assessors to Assess Fair and Uniform Nonutility Personal Property Values; Additional Review and Implementation of Property Appraisals; New Rule Series.
DATE FILED AS AN EMERGENCY RULE: June 30, 1986

par. 1 The Tax Department has filed as emergency rule two new Series number 4 and 5 and titled Guidelines for Assessors to Assure Fair and Uniform Nonutility Personal Property Values; Additional Review and Implementation of Property Appraisals.

par. 2 These rules establishes guidelines for assessors to begin the First Statewide Reappraisal and additional review.

par. 3 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope if its statutory authority in promulgating the emergency rule; or 3) can show than an emergency exists justifying the promulgation of an emergency rule.

par. 4 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].

par. 5 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule- Making Review Committee (LRMRC).

par. 6 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 7 The Tax Department has filed this emergency rule with supporting documents with the Secretary of State on June 30, 1986.

par. 8 It is the determination of the Secretary of State that the Tax Department has complied with the procedural requirements of WV Code §29A-3-15.

par. 9 (B) Statutory Authority -- WV Code §11-1A-29a reads in part:

*§11-1A-29a. Duty of tax commissioner, assessors, sheriffs and county commissions in valuation of property.*

*. . . The tax commissioner shall provide such necessary guidelines and instructions, in accordance with chapter twenty-nine-a of this code to assessors as will ensure fair and uniform values of such property within each county and among all counties in this state. The tax commissioner shall review each assessor's work to ensure that such guidelines and instructions have been uniformly followed.*

par. 10 It is the determination of the Secretary of State that the Tax Department has not exceeded its statutory authority by adopting these Series 4 and 5 rules.

par. 11 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

*(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 12 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 13 The Tax Department claims that there exists a "time limitation established by this code."

par. 14 The facts and circumstances as presented by the Tax Department are as follows:

The West Virginia Legislature on May 22, 1986 passed House Bill 153 which upon completion of certain activities by specified dates authorizes implementation of the First Statewide Reappraisal. Following is a listing of the activities which must occur.

(1) The Tax Commissioner must compile a list for each county of all separately assessed property which was subject to the appraisal, such list must be delivered to assessors, sheriffs and county commissions on or before June 15, 1986. [§11-1B-5(a)]

(2) Upon receipt of the list, the sheriff shall forthwith give notice to property owners that the appraisal is complete and the results are available in the assessor's office. [§11-1B-5(b)]

(3) The Tax Commissioner must mail real property valuation notices and notices of right to a hearing to property owners on or before August 15, 1986. For those property owners whose address is unknown to the Tax Commissioner, the sheriff must provide an appropriate mailing address on or before July 1, 1986. [§11-1B-6(a)]

(4) All petitions for hearings must be filed on or before September 2, 1986. [§11-1B-6(b)]

(5) All hearings and determinations must be rendered by December 1, 1986. [§11-1B-12]

Both prior to and in conjunction with the foregoing, W. Va. Code §11-1A-29a requires the assessor to review all personal property valuations in order to determine the accuracy of the values. To assist this process, the Tax Commissioner is required to provide guidelines and instructions in order that the review process is completed in sufficient time to allow the property owner to file a petition for a hearing on or before September 2, 1986.

These regulations comprise the required guidelines, and it is necessary for them to become effective prior to when the Legislature next meets.

par. 15 Although the WV Code does not specifically state that these rules shall be in effect on or before a particular date, it is clear that it is the Legislature's intent that deadlines and time limitations exist.

par. 16 It has been demonstrated by the Tax Department that these guidelines are necessary for the completion of steps which do have specific deadlines.

par. 17 The Secretary of State determines that the Tax Department has demonstrated the need to make effective this proposal.

par. 18 It is the decision of the Secretary of State that this proposal by the Tax Department is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Tax Department; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.

par. 19 This decision shall be cited as Emergency Rule Decision 12-86 or ERD 12-86 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Tax Department, the Attorney General and the Legislative Rule Making Review Committee.

KEN HECHLER
SECRETARY OF STATE

Entered ____________________