State Tax Department of West Virginia

Charleston 25305

ARCH A. MOORE, JR.
GOVERNOR

MICHAEL E. CARYL
COMMISSIONER

NOTICE OF EMERGENCY RULE

RULE TITLE: Administrative Review Of Appraisals By The Tax Commissioner

Review Of Appraisal By The County Commission Sitting As An Administrative Appraisal Review Board

Review By Circuit Court On Certiorari

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

Whereas, W. Va. Code § 11-1A-1 (1983) et seq. requires that all property, real and personal, situate in this State be reappriased so as to determine its value as of one thousand nine hundred eighty-three, and that such reappraisal be completed and the resulting information be made available no later than March 31, 1985.

Whereas, in accordance with W. Va. Code § 11-1A-1 (1983) et seq., all property, real and personal, situate in this State was re-appraised and the resulting information relating to such values was made available on or before March 31, 1985.

Whereas, W. Va. Code § 11-1A-15 (1983) requires that as appraisals are completed, lists of the property appraised, the owners and valuations are to be delivered to the assessor, the county commission and the sheriff of the county wherein the appraised property is liable to assessment.

Whereas, W. Va. Code § 11-1A-16 (1983) requires the assessor, upon receipt of the lists provided in W. Va. Code § 11-1A-15 (1983), to cause the publication of a legal advertisement which advises the completion of the reappraisal of property within the county and that the results of the reappraisal are available in the office of the sheriff of the county wherein the property is located, and to mail to each owner a notice of the amount of the valuation.

Whereas, W. Va. Code § 11-1A-16 requires the notice mailed to each property owner to inform each such owner that if he intends to challenge such valuation, he must so inform the State Tax Commissioner in writing within twenty-one days of the date of the notice, and if such intent is given, the State Tax Commissioner must provide the owner and the assessor within thirty-five days of the notice date a written statement of the information relied upon in making such appraisal.

Whereas, W. Va. Code § 11-1A-16 authorizes the owner within twenty-one days after the date of the written statement provided by the State Tax Commissioner to request, in writing, the State Tax Commissioner to review the valuation, such request to contain evidence which will enable the State Tax Commissioner to make a redetermination as to whether the process of making the appraisal was reasonable under the circumstances and the amount of the valuation of the appraised property is appropriate under the circumstances.

Whereas, W. Va. Code § 11-1A-16 requires the State Tax Commissioner to notify the property owner and the assessor of his determination.

Whereas, W. Va. Code § 11-1A-16 authorizes the State Tax Commissioner, prior to making a determination, to correct any error or mistake if he concludes the appraised value is incorrect due to a clerical error or an unintentional or inadvertant act, and to provide notice of such correction to the taxpayer, appropriate assessor, county commission and sheriff.

Whereas, the notices required by W. Va. Code § 11-1A-16 did commence being sent to property owners during the month of May, 1985.

Whereas, W. Va. Code § 11-1A-16 requires the State Tax Commissioner to reimburse each assessor for the postage expenditures required for mailing the notices, and to furnish such forms and envelopes as may be required, even though the statute is silent as to whether the requirement relates only to the mailing of the property valuation notices or extends throughout the entire appraisal hearing process.

Whereas, W. Va. Code § 11-1A-16 requires the State Tax Commissioner to perform the duties of the assessor in those circumstances where property has been returned or is returnable to the State Tax Commissioner and when he is so performing those duties, the State Tax Commissioner is to specify on the Notice in which county the appraisal review shall be heard and in which county a larger portion of the property appraised is or usually is situated, all of which are duties the State Tax Commissioner has not previously been required to accomplish.

Whereas, W. Va. Code § 11-1A-1(d) authorizes the Tax Commissioner to require the cooperation of other State and local officials concerned with the assessment or collection of taxes.

Whereas, W. Va. Code § 11-1A-1(f) authorizes the Tax Commissioner to prescribe all necessary forms and promulgate such rules and regulations as he believes to be necessary to carry out and enforce the provisions of W. Va. Code § 11-1A-1 et seq.

Whereas, W. Va. Code § 11-1A-17 authorizes the owner to petition for a hearing of record before the county commission sitting as an administrative appraisal review board and that the time for establishing the filing of such a petition commences with the mailing of the notice required by W. Va. Code § 11-1A-16(a).

Whereas, W. Va. Code § 11-1A-17 requires the owner or his attorney upon filing said petition with the county commission to certify that a copy of the petition has been mailed to the Tax Commissioner and the assessor.

Whereas, W. Va. Code § 11-1A-17 requires the county commission to sit as an administrative appraisal review board to determine whether the valuation fixed by the property reappraisal is correct under the circumstances.

Whereas, W. Va. Code § 11-1A-17 requires the county commission to take and preserve all testimony by nonstenographic electronic recordings and to preserve any and all other evidence presented.

Whereas, W. Va. Code § 11-1A-17 requires the county commission, upon making a determination the value is correct, to enter an order which fixes the value.

Whereas, W. Va. Code § 11-1A-17 requires the county commission, if it finds the value to be incorrect and there is sufficient evidence to correct the value, to make the appropriate correction and enter an order which fixes the correct value.

Whereas, W. Va. Code § 11-1A-17 authorizes the county commission, upon finding the value to be incorrect and that there is insufficient evidence to determine the correct value, to direct the parties to further develop the evidence and to continue the hearing until such time as sufficient evidence has been developed and presented, and when appropriate evidence has been presented to fix the value and enter an order which states the correct value.

Whereas, W. Va. Code § 11-1A-17 authorizes any person who is a payer of West Virginia ad valorem property taxes in any West Virginia county to protest an appraisal of property so long as the protestor alleges and shows good cause and files the appropriate petition within forty-five (45) days after publication of the notice required by W. Va. Code § 11-1A-16(a).

Whereas, W. Va. Code § 11-1A-17 authorizes the county commission to allow any person who is a taxpayer of ad valorem taxes in any West Virginia county, upon alleging and showing good cause, to intervene in any hearing provided by W. Va. Code § 11-1A-17.

Whereas, W. Va. Code § 11-1A-18 authorizes the owner, the Tax

Commissioner, the protestor or the intervenor to request the county commission to certify the evidence and remove and return the record to the circuit court on a writ of certiorari and to do so within thirty (30) days after the county commission notifies the parties of its decision.

Whereas, the notices required by W. Va. Code § 11-1A-16 have been sent and taxpayers under the authority of W. Va. Code § 11-1A-17 have commenced to petition for hearings before county commissions sitting as administrative appraisal review boards.

Wherefore, the Tax Commissioner determined that it was and is in the best interests of the persons who are liable for the payment of ad valorem property taxes on real and personal property situate in West Virginia for the following emergency regulations to be filed in the State Register, in order that the provisions thereof become effective immediately upon filing, as provided in W. Va. Code § 29A-3-15, so that the Tax Commissioner may promulgate regulations on: the mailing of notices which state the appraised value of property; the procedure whereby the taxpayers of ad valorem property in West Virginia may challenge such appraised value; the requirement by which the Tax Commissioner shall review such appraised value; the procedure whereby the taxpayer or protestor may petition for a hearing of record before the county commission of the county in which the property is situate; the time after which the county commission may start to hear petitions which challenge the valuations; the time by which the county commissions shall have completed the hearing process; the authority of the county commission to correct incorrect appraisals; the authority for a taxpayer of ad valorem property taxes in West Virginia to protest a property value appraisal; the authority of a person to intervene in the hearing process; the time during which the county commission's determination may be reviewed by the circuit court on a writ of certiorari instituted by the owner, Tax Commissioner, protestor or intervenor; the right of the property owner to be notified if and when a third party protests the owner's appraisal, or when a third party seeks to intervene in a protest by the owner or another third party; the right of the State Tax Department to be notified of a petition and the hearing date for said appeal before such appeal is heard; and, the need to establish a sense of finality and reliability in the hearing process because it is an essential cornerstone of tax policy and fiscal prudence.

Michael E. Caryl
State Tax Commissioner