

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #3

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1990 DEC 20 AM 11:13

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

AGENCY: STATE TAX DIVISION TITLE NUMBER: 110

CITE AUTHORITY W. VA. CODE § 11-1C-5(a)(2)(B)

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 1H

TITLE OF RULE BEING PROPOSED: VALUATION OF TIMBERLAND AND

MANAGED TIMBER

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



ALAN L. MIERKE
ACTING STATE TAX COMMISSIONER



FILED

State of West Virginia
Department of Tax and Revenue
Charleston 25305

1990 DEC 20 AM 11:13

GASTON CAPERTON
Governor

OFFICE OF WEST VIRGINIA
L. FREDERICK WILLIAMS, JR.
SECRETARY OF STATE
Secretary

CONSENT TO FILE RULE

December 20, 1990

To Whom It May Concern:

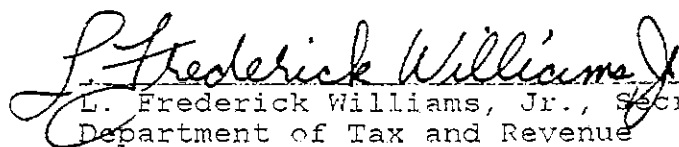
Title of Rule: VALUATION OF TIMBERLAND AND MANAGED TIMBERLAND

Title Number: 110

Series Number: 1H

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the final filing of the foregoing rule.

Signed this 20th day of December, 1990.


L. Frederick Williams, Jr., Secretary
Department of Tax and Revenue

FISCAL NOTE FOR PROPOSED RULES

FILED

Rule Title: VALUATION OF TIMBERLAND AND MANAGED TIMBERLAND 1999 DEC 20 AM 11:13

Type of Rule: Legislative Interpretive Procedural
OFFICE OF WEST VIRGINIA SECRETARY OF STATE

Agency: State Tax Division Address: State Capitol; Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	-0-	-0-	-0-	-0-	-0-
Current Expense	-0-	-0-	-0-	-0-	-0-
Repairs and Alterations	-0-	-0-	-0-	-0-	-0-
Equipment	-0-	-0-	-0-	-0-	-0-
Other	-0-	-0-	-0-	-0-	-0-

2. Explanation of above estimates:
The fiscal impact of the rule should not vary from that envisioned by the Legislature when it enacted Com. Sub. for H.B. 4127.

3. Objectives of these rules:
The legislative rule establishes the procedure for the classification and valuation of timberland and managed timberland.

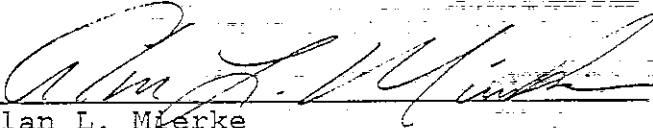
4. Expansion of Overall Economic Impact of Proposed Rule.
A. Economic Impact on State Government.
There should be no economic impact on State government.
B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens.
The economic impact at the local government level cannot be determined at this time.

C. Economic Impact on Citizens/Public at Large.

The economic impact at the local government level cannot be determined at this time.

Date: December 20, 1990

Signature of Agency Head or Authorized Representative



Alan L. Mierke
Acting State Tax Commissioner



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State of West Virginia
Department of Tax and Revenue
Charleston 25305

1990 DEC 20 AM 11:13

GASTON CAPERTON
Governor

OFFICE OF WEST VIRGINIA
L. FREDERICK WILLIAMS, JR.
SECRETARY OF STATE
Secretary

December 20, 1990

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: STATE TAX DIVISION

LEGISLATIVE RULE TITLE: VALUATION OF TIMBERLAND AND MANAGED TIMBERLAND

1. Authorizing statute(s) citation: W. Va. Code § 11-1C-5(a)(2)(B)
2.
 - a. Date filed in State Register with Notice of Public Comment: October 1, 1990
 - b. What other notice, including advertising, did you give of the hearing? None
 - c. Date of public comment period: October 1, 1990 through October 31, 1990
 - d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached X No comments received
 - e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact) December 20, 1990
 - f. Name and phone number of agency person to contact for additional information:
Jerry Knight - 348-3940
3. If the statute under which you promulgated the submitted rules requires certain findings and determination to be made as a condition precedent to their promulgation:
 - a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided. N/A
 - b. Date of hearing: N/A
 - c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor? N/A
 - d. Attach findings and determinations and reasons:

Attached: N/A

FILED

AGENCY APPROVED PROPOSED
WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE TAX DIVISION

1990 DEC 20 AM 11:13

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 110
SERIES 1H
1990

VALUATION OF TIMBERLAND AND MANAGED TIMBERLAND

Filed: December 20, 1990

§ 110-1H-1. General.

1.1 These regulations are legislative regulations as defined in W. Va. Code § 29A-3-1 et seq.

1.2 Scope. - These legislative regulations establish the procedure for the classification and valuation of timberland and managed timberland.

1.3 Authority. - W. Va. Code § 11-1C-5(a)(2)(B).

1.4 Filing Date. - December 20, 1990.

1.5 Effective Date. - These legislative regulations are effective upon being authorized by the Legislature.

1.6 Citation. - These legislative regulations may be cited as 110 C.S.R. 1H, § _____ (1990).

§ 110-1H-2. Introduction.

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

2.2 The appraised value of timberland shall be determined on the basis of market comparables derived through analysis of sales prices of comparable timberland properties, but in no instance shall be less than the appraised value of similar properties being utilized as managed timberland in the region.

§ 110-1H-3. Definitions. As used in this regulation 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.

3.1 "Average Annual Gross Income" means the gross income per acre calculated by dividing the end-of-rotation income by eighty (80) years.

3.2 "Average Annual Net Income" means the average annual gross income per acre minus the annual management cost per acre.

3.3 "Capitalization rate" means the rate used to convert an estimate of income into an estimate of value. Details of the procedure for determining the capitalization rate are found in Section 110-1H-8 of these regulations.

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

3.5 "Gross income" means the end-of-rotation (eighty (80) years) gross income potential determined for each productivity class using the following formula: Yield (MBF and/or Cords Per Acre) x Present Stumpage Price = Gross Income.

3.6 "Management cost" means the cost determined annually by the Tax Commissioner to be the average annual cost of maintaining and protecting a producing forest. Maintenance costs may include costs of inventory, boundary survey, security, maps, and any other items as can be shown to have been necessary costs. Protection costs may include costs of protection against forest fires; harmful insect and tree diseases; costs of repair and replacement due to vandalism as reported to appropriate police agencies, including all-terrain vehicles (ATV's) and other vehicular damages and costs of replacing and replanting forest reproduction and plantations destroyed or injured by deer or other wild animals whose populations exceed the maximum carrying capacity of the site. Management costs will be determined as an average for the entire State or by regions, or by Managed Timberlands Productivity Grades and will be deducted from gross annual income per acre to obtain net annual income per acre.

3.7 "Managed Timberland" means surface real property, except farm woodlots, of not less than ten contiguous acres which is devoted primarily to forest use and which has existent on it and well distributed, commercially valuable tree species of any size sufficient to comprise at least forty percent (40%) normal stocking of forest trees as shown by the following Table One and that is managed pursuant to a plan provided for in Section 110-1H-9, Valuation Application, of the Regulations. Land devoted to forest use that has been recently harvested of merchantable timber and thus is being regenerated into a new forest shall be eligible. To be qualified, the land must be growing a commercial forest crop that is physically accessible for harvesting when mature.

Table 1
 Minimum Number of Trees Required Per Acre to Determine
 30 Square Feet of Tree Basal Area of 40%
 Stocking for Classification as Forest Land

D.B.H. Range	D.B.H. in 2" Classes	Basal Area Per Tree	Per Acre	Per 1/5 Acre	Per 1/10 Acre
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up to 2.9".....Seedlings			400	80	40
3.0-4.9".....	4	0.0873	400	80	40
5.0-6.9".....	6	0.1964	153	31	15
7.0-8.9".....	8	0.3491	86	17	9
9.0-10.9".....	10	0.5454	55	11	6
11.0-12.9".....	12	0.7854	38	8	4
13.0-14.9".....	14	1.0690	28	6	3
15.0" +	16 +	1.3963	21	4	2

- NOTE:
- (a) Area 1/5 acre, circle, diameter 105'4"; square 93.4" per side
 - (b) Area 1/10 acre; circle, diameter 74'6"; square 66'
 - (c) Number of seedlings present may qualify on a percentage basis; Example, 100 seedlings would be equivalent of 7.5 square feet of basal area (25% x 30 = 7.5)
 - (d) Seedlings per acre are based on total pine and hardwood stems. Where intensive pine management is practiced a minimum of 250 well distributed loblolly or white pine seedlings will qualify.

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

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

3.10 "Stumpage Price" means the market value of standing trees (on the stump) prior to felling and removal, and is expressed in dollars per unit of volume (MBF or cords). For appraisal purposes, real stumpage price will be assumed to be stable over time, and shall be calculated by the Tax Commissioner from reports based upon 16 inch logs as prepared by the Division of Forestry, Department of Commerce, Labor, and Environmental Resources and other available sources. A five-year moving average shall be computed in order to minimize the effects of short-term fluctuations. Stumpage prices shall be computed for each stumpage price region in order to reflect regional differences in markets, topography, and accessibility.

3.11 "Stumpage Price Region" means a geographical region of the State, usually consisting of several counties, in which conditions of the timber, timber markets, topography, and accessibility are sufficiently similar to result in similar stumpage prices at any one point in time. The counties involved in each stumpage price region have been identified by the Division of Forestry, Department of Commerce, Labor, and Environmental Resources as follows:

Region 1	Region 2	Region 3	Region 4	Region 5
Brooke	Braxton	Barbour	Berkeley	Boone

Cabell	Calhoun	Greenbrier	Grant	Fayette
Hancock	Clay	Monroe	Hampshire	Kanawha
Jackson	Doddridge	Nicholas	Hardy	Lincoln
Marshall	Gilmer	Pendleton	Jefferson	Logan
Mason	Harrison	Pocahontas	Mineral	McDowell
Ohio	Lewis	Preston	Morgan	Mercer
Pleasants	Marion	Randolph		Mingo
Putnam	Monongalia	Tucker		Raleigh
Tyler	Ritchie	Upshur		Summers
Wetzel	Roane	Webster		Wayne
Wood	Taylor			Wyoming
	Wirt			

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

3.13 "Timberland" means any surface real property, except farm woodlots of not less than ten contiguous acres, which is primarily in forest and which has existent on it and well distributed commercially valuable tree species of any size sufficient to comprise at least forty percent (40%) normal stocking of forest trees, as shown by Table One. Land that has been recently harvested of merchantable timber and is growing into or being planted as a new forest shall be eligible.

3.14 "Managed Timberland Productivity Grades" means timberland classified as Grade 1 (excellent to very good), Grade 2 (good to fair), or Grade 3 (poor), according to Site Index.

Table of
 Timberland Productivity Grades

Timberland Productivity Grade	Site Index	Yield Per Acre over 80 Years	
		MBF	Cords
Grade 1 (Excellent to very good)	80 (75 or more)	14.5	10.5
Grade 2 (Good to Fair)	70 (65 - 74)	9.7	14.9
Grade 3 (Poor)	50 (less than 65)	4.5	18.5

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

3.15 "Managed Timberland Productivity Maps" means those maps prepared showing the productivity class of all timberland in this State. The primary source of information for preparation of these maps shall be the Soil Survey,

published by United States Department of Agriculture (USDA) Soil Conservation Service.

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

3.15.2 For Webster and Pocahontas Counties: G.R. Trimble, Jr., "An Equation for Predicting Oak Site Index Without Measuring Soil Depth", Journal of Forestry, 62:325-327 shall be used.

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

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

§ 110-1H-4. Managed Timber Productivity Maps. - Timber productivity maps indicating the Managed Timberland Productivity Grade of soils as Excellent to Very Good, Good to Fair, and Poor will be available for review at each county assessor's office and can be purchased from the Department of Tax and Revenue. These maps will be reviewed and updated periodically.

§ 110-1H-5. Managed Timber Productivity Grades. - Managed Timber productivity grades shall be based on site index and the ability of the site to yield timber, measured in thousands of board feet (MBF) per acre (Scribner rule) or cords per acre at the end of a rotation of eighty (80) years.

§ 110-1H-6. Appraised Value of Managed Timberland. - The appraised value per acre of managed timberland shall be calculated by dividing average annual net income by the capitalization rate. However, the appraised value for any grade of managed timberland will not be less than \$25 per acre.

§ 110-1H-7. Procedure for Determining Value of Managed Timberland. - The following is a step-by-step procedure for determining the appraised value of managed timberland.

7.1 All managed timberland is mapped according to productivity grade (See (e)(15)0 on USCS 7.5 minutes quadrangle sheets (1" = 2000')). The West Virginia surface maps are then reduced from a scale of 1" = 400' to 1" = 2000' in order to conform to the scale of the timberland productivity maps.

7.2 Average stumpage price (5 year moving average) is determined by stumpage price reports from the Division of Forestry, Department of Commerce, Labor, and Environmental Resources, and other available sources.

7.3 End-of-rotation (80 years) gross income potential per acre is determined for each productivity grade using the following formula: Average yield (MBF and/or cords per acre) x present average stumpage price = gross income.

7.4 Annual gross income potential per acre is determined using the following formula: Gross income potential per acre - 80 years = annual gross income potential per acre.

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

7.6 Value per acre is determined by capitalizing the net annual income per acre.

7.7 A table is prepared showing value of timberland by productivity grade.

7.8 Mylar maps, or an index, are prepared showing tax parcels and timberland productivity grade.

7.9 The appraised value of the property is calculated using the maps and table of managed timberland values.

7.9.1 If a parcel contains acreage in more than one managed timberland grade and/or in other property descriptions, total parcel value will be determined on the basis of the acreages classifications. For example, a 100 acre parcel has the following characteristics:

- 1 Acre in Homesite
- 9 Acres in Pasture
- 5 Acres in Timberland (not accessible)
- 30 Acres in Managed Timberland Grade 1
- 40 Acres in Managed Timberland Grade 2
- 15 Acres in Managed Timberland Grade 3
- 100 Acres

Appraisal of Land =

1 Acre Homesite	X	Homesite Value
+ 9 Acres Pasture	X	Pasture Value
+ 5 Acres Timberland	X	Woodland Value (Assessor Assigned Rates)
+ 30 Acres Managed Timberland	X	Grade 1 Value
+ 40 Acres Managed Timberland	X	Grade 2 Value
+ 15 Acres Managed Timberland	X	Grade 3 Value

§ 110-1H-8 Capitalization Rate. - A single statewide capitalization rate for timberland will be determined annually by the Tax Commissioner through the use of generally accepted methods of determining such rates. The rate will be based on the assumption of a level, non-inflating perpetual income series. The capitalization rate used to value managed timberland will be developed considering (1) a discount rate determined by the summation technique, and (2) a property tax component.

8.1 Discount Component. - The summation technique will be used in developing a discount component of the capitalization rate. The five subcomponents of the discount rate are:

8.1.1 Safe Rate. - The safe rate will reflect a rate of return that an investor could expect on an investment of minimal risk. It will be developed through review of interest rates offered on thirty-year United States Treasury Bills for a period of five years prior to the appraisal date.

8.1.2 Illiquidity Rate. - The illiquidity rate will be developed through an annual survey to determine a reasonable estimate of time that timberland when put up for sale, remains on the market before being sold. The time thus determined will be used to identify United States Treasury Bills with similar time differentials in excess of thirteen-week Treasury Bills. The interest differential between these securities will be used to represent the illiquidity rate. For example, if it is determined that a tract of timberland remains on the market for an average of six months (26 weeks) before being sold, the illiquidity rate will be derived by taking the rate on 26-week Treasury Bills minus the rate on 13-week Treasury Bills.

8.1.3 Risk Rate. - The relative degree risk of an investment in timberland is difficult to determine from published interest rates. Since farm investments closely approximate timberland investments in terms of risk, the risk rate for timberland will be developed from an annual survey of interest rates on loans for acquisition and/or development of timberland in conjunction with farmland. The survey will cover a five-year period prior to the appraisal date. Results of the survey will be compared to interest rates offered on thirty-year United States Treasury Bills for the same five-year period. The difference between the two combined with bands of investment analysis will be used as a basis to estimate the risk rate.

8.1.4 Management Rate. - The management rate represents the cost of managing the investment, not the cost of managing the timberland. The management rate will be developed through a survey of investment firms to identify annual charges for the management of investment portfolios.

8.1.5 Inflation Rate (negative). - Nominal interest rates, including the "safe rate" mentioned above, are higher than real rates by an amount representing expectation of future inflation. However, net annual income from timberland is to be estimated assuming level future prices (no inflation). Therefore, the capitalization rate must be a real rate, net of expectation of inflation.

8.1.6 In determining the discount component of the capitalization rate, the Tax Commissioner will take the sum of the safe rate, the illiquidity rate, the risk rate, and the management rate, and will deduct from this sum the inflation rate.

8.2 Property Tax Component. - The property tax component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class III property. The property tax component will be added to the discount rate component to determine the capitalization rate for the managed timberland valuation.

§ 110-1H-9 Valuation Application. - In order to qualify under the provisions of this rule for managed timberland valuation purposes, the owner(s) of the timberland must on or before the first day of July enter into a contract with

the Division of Forestry, West Virginia Department of Commerce, Labor, and Environmental Resources and will state that the real estate is being used in a planned program of timber management and erosion control practices intended to enhance the growth of commercially desirable species through generally accepted silvicultural practices and the use of Best Management Practices, as specified in the West Virginia Forest Practice Standards and the West Virginia Nonpoint Source Management Program. This contract shall be assigned with the sale of the land when the land is sold to be used for managed timberland. On or before September 1, the owner(s) will certify, by notarized document, (a) a commitment to maintain and protect timberland certified as managed timberland, by documenting land-use objectives to include resource management and soil and water protection; or (b) by submitting a plan prepared by a professional forester and attesting to follow it. In either event, the following information shall be provided:

9.1 County, district, map, parcel number, and deed book acreage and actual surveyed acreage, if available, for each parcel that is to be valued as managed timberland.

9.2 The amount of acreage in each parcel that should be classified as managed timberland. For those properties where managed timberland acreage is different than deed acreage, a map identifying location of timberland acreage is required.

9.3 Signature from timber management forester acknowledging that the property is being managed in accordance with the Best Management Practices for forestry as outlined in the West Virginia Forest Practice Standards and the Best Management Practices for water quality as outlined in the West Virginia Nonpoint Source Management Program.

9.4 The Division of Forestry, Department of Commerce, Labor and Environmental Resources shall on or before October 1 of each year, provide the State Tax Department a copy of such certifications and reports and provide a list of those properties certified as managed timberland and those denied certification.

§ 110-1H-10 Summary of Method of Determining Appraised Value. - The formula to be used in determining the appraised value of property categorized as managed timberland is as follows:

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

§ 110-1H-11 Appraised Value of Timberland. - The appraised value per acre of timberland shall be determined based upon market comparable.

§ 110-1H-12 Valuation of Less Than 10 Acres. - A parcel, or contiguous parcels, of timberland totalling less than ten (10) acres shall not be considered to be managed timberland and shall be valued as timberland based upon market comparables, without considering the productivity capacity of the site for timber yield.

§ 110-1H-13 Valuation of Farm Wood Lots. - Farm wood lots and the parts of a farm which are in timber shall be included in the valuation of farm property under W. Va. Code § 11-1A-10, except when the timberland is a separate parcel or tract entered in the land books, and except when the primary use of the farmland is in commercial forestry or the growing of timber for commercial purposes. See W. Va. Code § 11-1A-3(f).

§ 110-1H-14 Timberland Improvements. - Improvements such as roads and service buildings that are a required (usual) part of timber management operations shall not be subject to an additional market value appraisal over and above the appraisal of the managed timberland. Improvements that are not a necessary part of the timber management operations, such as dwellings, cottages, hunting camps, and other recreational facilities, and associated real estate shall be subject to additional market value appraisals.

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1990 DEC 20 AM 11:16

PUBLIC COMMENTS

RE: PROPOSED "MANAGED TIMBERLAND" REGULATIONS
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

I. Mr. Ron Phillips, Assessor of Wyoming County.

A. Comment

"I am concerned that the managed timberland appraisals will also be much lower in comparison to the timberland in residential appraisals."

Response

West Virginia Code § 11-1C-5(b) permits the affording of special valuation to "managed timberland" as authorized by Section 53 of Article 6 of the Constitution of West Virginia. However, the value standard for timberland and for residential property is market value. Thus special treatment for "managed timberland" has a constitutional and statutory basis that allows it to be lower than market value.

B. Comment

"I feel that application for managed timberland is made too easy."

Response

The rules and regulations require that the property owner enter into a contract with the Division of Forestry indicating that the property is being managed pursuant to management practices contained in the West Virginia Forest Practices Standards and the West Virginia Nonpoint Source Management Program. The Division of Forestry is required to annually certify to the Department of Tax and Revenue a list of those properties that qualify as "managed timberland." These application requirements are consistent with those contained in West Virginia Code § 11-1C-1 et. sec.

C. Comment

I think the assessors should be given an opportunity to review the contracts and given a right to express any opinions or comments before final determination of managed timberland is made.

Response

The criterion contained in West Virginia Code § 11-1C-1 et sec. for the application of the managed timberland valuation is very technical and administration of these requirements necessitate a considerable knowledge of forestry and forest management practices. This expertise is housed with the Division of Forestry of the Department of Commerce, Labor and Environmental Resources. Thus West Virginia Code § 11-1C-1, et sec., gives the authority of approval of managed timberland contracts and applications with the Division of Forestry. Local assessors will be given an opportunity to request additional inspections and to provide comments to the Division of Forestry should a difference of opinion arise concerning a particular parcel. Injecting this type of assessor inquiry into the application process does therefore not appear necessary.

D. Comment

I feel that the assessor in each county should be informed of the appraisal process of managed timberland and should be given the appraisals to review before notification is given to the owner.

Response

Once managed timberland appraisals have been completed they are to be given to the local assessor for their use in assessing managed timberland properties. West Virginia Code § 11-1C-1 provides

that the county assessor may accept the appraisal and further provides that if the county assessor fails to accept the appraisal provided by the Tax Commissioner the county assessor shall show just cause to the valuation commission for the failure to accept such appraisal and shall further provide for the valuation commission a plan by which a different appraisal will be conducted. This vehicle contained in statute provides an opportunity for review of valuations by the local assessor and should provide sufficient input from local assessors offices regarding the valuation estimates of the State Tax Commissioner issued pursuant to the finalized rules and regulations for managed timberland.

Division of Forestry
Department of Commerce, Labor
and Environmental Resources

A. Comment

As a cleanup it would seem pertinent to remove the five words "similar properties being utilized," as which appear in Section 2.2.

Response

Section 2.2 reads as follows: "The appraised value of timberland shall be determined on the basis of market comparable derived through analysis of sales prices of comparable timberland properties, but in no instance shall be less than the appraised value of similar properties being utilized as managed timberland in the region."

The proposed rules and regulations classify managed timberland into three soil productivity classifications. These soil productivity classifications will have differing per acre values depending on

the ability of the soil to produce a harvestable crop of timber over an eighty year rotation period. If a particular property has a higher yield potential the lower limit of value should be based upon similar properties being utilized as opposed to the lowest managed timberland value. It is therefore felt that the words- similar properties being utilized as - should remain in Section 2.2 of the proposed regulations.

B. Comment

In Section 3.4 I suggest inserting the term "gross" before the word "income."

Response

Section 3.4 of the regulations read as follows: "End-of-rotation income potential" means the amount of income per acre calculated by multiplying the end-of-rotation volume by the present stumpage price. This mathematical exercise does in fact yield a gross income, however insertion of gross income would not change the import of a definition contained in Section 3.4 of the regulations.

C. Comment

There seems to be a conflict with the formula introduced in Section 3.5 and later used in Section 7.3. Should these be identical since they both refer to end-of-rotation gross income potential.

Response

Although the wording in the formulas are slightly different the result would be the same. It is therefore felt that to avoid the necessity of refiling the regulations these formulas do not necessarily need to be altered.

D. Comment

I don't really understand Section 3.8, but I suppose its o.k. except that I would feel that it should not be restricted in Line 2 to sub-lessor.

Response

Section 3.8 reads in part "owner of timber" means any person who owns an interest in timberland including a sub-lessor or an owner of a contract right to cut timber. This section is written to include both lease arrangements and owners with a contract right to cut timber as being considered owner of timber for property valuation purposes. It is felt that the Section is adequate in expressing this lessor contract arrangement for owners of timber.

E. Comment

It was pointed out by a representative of a large forestry corporation, that there is a small conflict in Section 3.10 as regards real stumpage price being assumed to be stable over time and later the paragraph, a five year moving average is used.

Response

The reference to stumpage prices being stable over time refers to the treatment of stumpage prices in the valuation formula. The reference to the determination of stumpage prices as being a five year moving average specifies the derivation or determination of the stumpage price figure which will then be injected into the formula as a stable amount over a period of time.

F. Comment

A staff person in this office questioned the footnote in the table of timberland productivity grades on page four. The question was whether the word "annually" is needed.

Response

The Tax Commissioner is required to annually provide appraisals of managed timberland properties to local assessors for assessment purposes. Although an annual review of this information may not be conducted, the ability to conduct an annual review may be necessary. The word appearing before annually, "may" indicates that the tax commissioner may annually review but is not required to annually review this information.

G. Comment

Should Section 7.6 begin appraised value per acre instead of value per acre.

Response

Section 7.6 reads as follows: Value per acre is determined by capitalizing the net annual income per acre. While insertion of the word appraised may be more descriptive, it would not significantly change the import of Section 7.6. It is therefore felt that insertion of the word appraised is not necessary in that it would require refiling of the regulations.

H. Comment

We discussed computing a capitalization rate using a discount rate determined by the summation technique verses one determined by the bands of investment technique. You said that you would reference the bands of investment. I find it under

8.1.3, the risk rate. Is this the place for this reference?

Response

The Department plans to continue use of the summation technique in developing a capitalization rate for managed timberland properties. In developing the risk component for this rate, it is necessary not only to look toward lending institutions for rates for debt financing of the operation but also to the market for the rate assigned to equity financing for such operations. Therefore the reference to bands of investment analysis is included here to bring attention to the difference between risk rates assigned to debt and equity financing in developing a summation approach capitalization rate.

III. West Virginia Forestry Association

A. Comments

Section 2.2- the words (properties being utilized as) should be deleted and new wording should read (appraised value of similar managed timberlands in the region).

Response

Reference response to comment A. West Virginia Division of Forestry.

B. Comment

3.4 - the word gross should be added in two places. "end-of-rotation" (gross) potential means the amount of (gross) income per acre.

Response

While these changes may add clarity to Section 3.4 they would not change import of Section 3.4 and therefore will not be

injected into the rules and regulations requiring a refiling of the rules.

C. Comment

Section 3.6- the words (including other costs of management) should be added at the end of the second sentence.

Response

This change would in effect leave an open end to a myriad of costs that may be considered as management costs for purposes of these regulations. The Department feels that the definition contained in Section 3.6 for management costs is sufficient and appropriately addresses valuation concerns regarding this component.

D. Comment

Section 3.7 - the words (and homesites) should be added after farm wood lots in the first sentence.

Response

The first sentence in the definition of managed timberland is taken from West Virginia Code § 11-1C-2 and sufficiently defines those properties eligible for managed timberland valuation treatment.

E. Comment

Section 3.8 - the first sentence should read "owner of timberland" means any person who owns or has any interest in timberland including any party to a lease and any owner of a contract right to cut timber.

Response

See response to comment number 4 of the West Virginia Division of Forestry.

F. Comment

Section 3.10 - This statement is conflicting and the second sentence should be for appraisal purposes a five year moving average stumpage price will be calculated by the Tax Commissioner.

Response

See response in comment #5 West Virginia Division of Forestry.

G. Comment

Section 3.14 - The last statement which states that the Commissioner may adopt a different timber scale annually is not realistic and the word "annually" should be dropped.

Response

See response to comment #6 West Virginia Division of Forestry.

H. Comment

Section 7.6 - The language should be "appraised value per acre".

Response

See response to comment #7 West Virginia Division of Forestry.

I. Comment

Section 110-1H-8 - Language should be added to the third sentence under capitalization rate. The capitalization rate used to value managed timberland will be developed using a bands of investment technique and considering...

Response

The Department of Tax and Revenue plans to continue use of a summation technique in developing a capitalization rate. Bands of investment data, i.e. debt and equity financing data will be used to quantify the risk component of the summation approach. The Department does not contemplate using a bands of investment technique to separately develop a capitalization rate as this technique would not lend itself to many properties that may be subject to managed timberland valuation under these rules and regulations.

J. Comment

Section 110-1H-9 - Language should be added to simplify the annual filing of documents as to only require changes be filed after the original filing. The current language could lead to much paperwork for both the Division of Forestry and the Tax Department.

Response

The application process was designed to solicit information that would enable the Department of Tax and Revenue to apply managed timberland valuation procedures to properties certified as managed timberland by the Division of Forestry. Thus, the requirement of annually filing a return with the Department of Tax and Revenue has been eliminated. As this process serves in lieu of the filing of a tax return the Department is of the opinion that the information should be submitted on an annual basis.

K. Comment

Section 8.1.5 - You need an extrinsic independent source for your data.

Response

The source of information for the inflation rate is the Federal Department of Labor, certainly an extrinsic source of data. We feel that the source is nationally recognized and is reliable for projecting inflation rates for the Department's purposes.

L. Comment

Section 9.2 - The word "timberland" should be dropped at the end of last sentence. Thus, reading "a map identifying a location of such acreage is required."

Response

The Department believes that present wording in Section 9.2 is sufficient to identify managed timberland and timberland acreage where surface acreage is in excess of managed timberland acreage.

IV. Westvaco Corporation

A. Comment

Section 2.2 - While the intent of this section is clear and admirable effort at making sure that the use value method is an actual inducement to management. It seems unlikely that demanding a property be valued higher than markets will justify in order to ensure that market derived values are not lower than income derived values will withstand a court challenge. As an example, this appears to mandate that property which fails to meet the physically accessible for harvesting criterion in definition of managed timberland would have to be valued at least as highly as similar land that is accessible.

Response

Similar properties would mean similar in all respects including accessibility. Limiting the value of timberland to the value of similar managed timberland properties ensures that property owners applying for managed timberland treatment will not flip flop from timberland to managed timberland depending on which may be more advantages.

B. Comment

Section 3.2 net income should be calculated net of casualty losses as well as management costs.

Response

Casualty losses are not ordinary and of a recurring nature and thus should not be imputed into the income stream in valuing a typical property for managed timberland purposes.

C. Comment

Section 3.5 potential yielding cords should only be part of the income calculation in those counties that have an actual market for cord wood.

Response

This comment, while appropriate for fee appraisal work, is perhaps too detailed for a mass appraisal environment. The Department is of the opinion that procedures outlined in the rules and regulations will sufficiently accommodate development of an income stream for managed timberland valuation purposes.

D. Comment

Section 3.6 management costs appear to include animal deprivation only when

animal population exceeds carrying capacity. Since loss is loss regardless of the status of an animal population definitions should include all such deprivation.

Response

Certain deprivation losses are included in the soil productivity site index. These deprivation losses consider the carrying capacity of the forest. Therefore, only in those instances where it can be demonstrated that deprivation in excess of normal carrying capacity has occurred would the Department consider this in management costs on a case by case basis.

E. Comment

The defined phrase "owner of timber" does not appear elsewhere in the proposed regulations and is therefore irrelevant.

Response

Owners of timberland are referenced in Section 9, Valuation Application, and is therefore relevant in the definition section of the regulations.

F. Comment

As in Section 3.2 net income potential should be net of casualty losses.

Response

Reference response to comment #2.

G. Comment

1.10-1H-9(a) this language is unclear as to what it intends to require. Suggest changing the word documenting to indicating.

Response

The word "documenting" requires proof of a claim whereas "indicating" only requires that a statement be made. The Department of Tax and Revenue is of the opinion that the appropriate wording is documenting and would recommend that documenting continue to be use in these rules and regulations.

Ron Phillips

FILED

WYOMING COUNTY ASSESSOR

PINEVILLE, WEST VIRGINIA 24874

PHONE 732-8000
OFFICE OF THE SECRETARY OF STATE

November 1, 1990

Legal Division
Department of Tax and Revenue
P. O. Box 1005
Charleston, WV 25324-1005

Dear Sir:

This letter is in response to the proposed "Managed Timberland" regulations which I received in the mail October 30, 1990. I realize that the period for comments has expired, however, since inadequate time was given to respond to these issues, I hope that my letter will be given some consideration.

Since the 1983 reappraisal, I have been concerned with the appraisal of timberland properties in my county. I felt the 1983 timberland appraisals for Wyoming County were far too low and with the appraisal of all properties again by July 1, 1993, I am concerned that the managed timberland appraisals will also be much lower in comparison to the timberland and residential appraisals.

Under the new guidelines, I feel that application for managed timberland is made too easy. More than half of my county is owned by out-of-state land companies. These companies have personnel who can easily prepare contracts and information to state that certain parcels are being used in a planned program of timberland management. I strongly disagree with the fact that no inspection will be made of the parcels before determination of managed timberland unless a request is made by the state, county, or other taxing authority of appropriate jurisdiction. I feel it should be mandatory for a field inspection be made before any determination of managed timberland is approved and that field inspections should continue from time to time to see that these parcels remain under management. I am concerned that certain parcels will be classified as managed timberland on paper only.

Although I feel that there are no parcels which can be classified as managed timberland in my county at the present time, I am sure contracts will be made and I think the assessor should be given an opportunity to review the contracts and given a right to express any opinions or comments before a final determination of managed timberland is made.

Legal Division

Page 2

November 1, 1990

4
I realize that I do not possess the expertise to appraise managed timberland. However, I feel that the assessor in each county should be informed of the appraisal process of managed timberland and should be given the appraisals to review before notification is given to the owner. If certain parcels do qualify under managed timberland, I think comparisons will need to be made by my office with adjoining parcels which will be my responsibility to see that the appraisals are fair and uniform.

In closing, I hope that changes can be made to the existing regulations in order that the assessors are given more rights in the appraisal of managed timberland properties. Although I have been relieved of the responsibility of the appraisals of managed timberland, it is still my primary concern to see that all properties are appraised fairly and equally wherever it is located in my county.

Very truly yours,



Ron Phillips
Wyoming County Assessor

RP/td

cc: Robert A. Hoffman
Director
Property Tax Division



DIVISION OF FORESTRY
DEPARTMENT OF COMMERCE, LABOR AND
ENVIRONMENTAL RESOURCES
State Capitol
Charleston, West Virginia 25305

Gaston Caperton
Governor

John M. Ranson
Secretary

William H. Gillespie
Administrative Forester

October 31, 1990

Mr. Jerry Knight, Chief
Special Properties Section
Property Tax Division
Building 1, Room 314
State Capitol
Charleston, WV 25305

Dear Jerry:

This is to call your attention to the last two or three corrections that I wanted to insert in the proposed regulations valuing timberland and managed timberland.

As I had mentioned over the phone, I did call at approximately nine o'clock a.m. on October 1, 1990, to mention changes that I thought necessary...based on the draft which had been delivered to me the preceding Friday. In most cases, these are minor, but I felt they needed to be addressed.

On the morning of October 1, I called to relay the information to you and found that you were on sick leave. I then gave the information to Don Hebb, who said that he would deliver it to the Legal Division. Later, he re-called to say that the Legal Division had already filed the regulations. I thought this strange, because they normally file it at 5 p.m.; but upon questioning Don, he said that they had previously asked him if there were any additional changes, and, based upon his conversation with you the preceding Friday, he had told them there were none. I guess it's a comedy of timing. At the time, I suggested that I would take care of it or attempt to during the public hearings. Now I see that we have gone to a comment period instead. And that's okay.

Don also told me that the way these things are normally handled is for both sides to agree and to then deliver a letter to the legislative committee pointing out that these items should have been changed before the regs were filed. Maybe we should talk about some of the points.

Don has perhaps mentioned my suggestions to you. In general, they were as follows:

As a cleanup, it would seem pertinent to remove the five words "similar properties being utilized as" which appears in 2.2.

2 In 3.4, I suggested inserting the term "gross" before the word "income".

Jerry Knight, Chief
Page 2
October 31, 1990

2 There seems to be conflict with the formula introduced in 3.5 and later used in 7.3. Should these be identical since they both refer to end-of-rotation gross income potential?

3 I don't really understand 3.8, but I suppose it is okay except that I would feel that it should not be restricted in line two to sublessor. Using this terminology, wouldn't it be wise to add lessor, lessee and sublessee? Of course, this could be approached by changing the terminology to include any person involved in a lease.

5 It was pointed out, by a representative of a large forestry corporation, that there is a small conflict in 3.10 as regards real stumpage price being assumed to be stable over time and later in the paragraph, a five-year moving average is used.

6 A staff person in this office questioned the footnote in the Table of Timberland Productive Grades on page four. The question was whether the word "annually" is needed. Would it suffice to delete "annually" and just say that the Tax Commissioner may do these things?

7 Should 7.6 begin "Appraised value per acre" instead of "Value per acre"?

8 We discussed computing a capitalization rate using a discount rate determined by the summation technique versus one determined by a band of investment technique. You said you would reference the band of investment. I find it under 8.1.3, the risk rate. Is this the place for this reference? In my opinion, this is comparing apples and dairy cows. Wouldn't it be more proper, if we're going to use a band of investments, to include it up under the capitalization rate paragraph?

Jerry, I'm sorry that we didn't get together on these things on that Monday as anticipated. However, only the Good Lord has charge of the time when someone is going to be sick. In a seminar before some of the forest industry leaders, I mentioned some of these points. They may come to you from any of the 25 or 30 who happened to be present.

Sincerely,



William H. Gillespie

WHG:jah

cc: Legal Division

P.S. I have had a computer program developed that will handle this office's part of receiving and certifying managed timberland. Someday in the near future we need to discuss this.



WEST VIRGINIA FORESTRY ASSOCIATION

P.O. BOX 724
RIPLEY, W. VA. 25271
PHONE (304) 273-8164

October 31, 1990

Legal Division
Department of Tax and Revenue
P.O. Box Drawer 1005
Charleston, WV 25324-1005

RECEIVED
1990 OCT 31 AM 11:03
STATE TAX DEPARTMENT
LEGAL DIVISION

Dear Sirs:

On behalf of the 752 members of the West Virginia Forestry Association, I would like to submit the following comments pertaining to Rule 1H - Valuation of Timberland and Managed Timberland.

110-1H-2. 2.2 - the words (properties being utilized as) should be deleted and the new wording would read (appraised value of similar managed timberland in the region.)

Some adjustment procedure should be included so that managed timberland is always a lower value than other timberland if the managed timberland formula produces values higher than actual market values.

2 110-1H-3. 3.4 - The word gross should be added in two places. "End-of-rotation (gross) potential means the amount of (gross) income per acre -----.

3 3.6 - The words (including other costs of management) should be added at the end of the second sentence.

4 3.7 - The words (and home sites) should be added after farm woodlots in the first sentence.

5 3.8 - The first sentence should read: "Owner of Timber" means any person who owns or has any interest in timberland, including any party to a lease and an owner of a contract right to cut timber.

This section should really be dropped as the term does not appear in other parts of the regulations.

6 3.10 - This statement is conflicting and the second sentence should be - For appraisal purposes, a five year moving average stumpage price will be calculated by the Tax Commissioner -----.

7 3.14 - The last statement which states that the Commissioner may adopt a different timber scale annually is not realistic and the word annually should be dropped.

8 110-1H-7. 7.6 - The language should be: Appraised value per acre. -----.

9 110-1H-8. Language should be added to the third sentence under CAPITALIZATION RATE: The capitalization rate used to value managed timberland will be developed using a band of investment technique and considering -----.

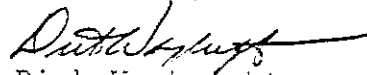
10 110-1H-9 Language should be added to simplify the annual filing of documents as to only require changes be filed after the original filing. The current language could lead to much paperwork for both the Division of Forestry and the Tax Department.

11 Language needs to be added pertaining to an appeals process for the landowner that does not agree with the Tax Department or the Division of Forestry.

12 8.1.5 - You need an extrinsic independent source for your data.

13 110-1H-9. 9.2 - The word timberland should be dropped at the end of the last sentence, thus reading: a map identifying location of such acreage is required.

Sincerely,


Dick Waybright
Executive
Director

Westvaco

October 30, 1990

Alan L. Mierke, Acting State Tax Commissioner
Legal Division
Department of Tax and Revenue
P.O. Drawer 1005
Charleston, WV 25324-1005

Dear Mr. Mierke:

Enclosed are Westvaco Corporation's comments regarding proposed West Virginia legislative regulations for Title 110, Series 1H, 1990.

Please consider these comments before final publication of the regulations.

Very truly yours,



Roger L. Sherman
Public Affairs Forester

RLS/jet
Enc:

Timberlands Division
Appalachian Woodlands
Box 577
Rupert, WV 25984
Telephone 304 392 6373

STATE DEPARTMENT OF REVENUE
1990 OCT 31 AM 11:03
RECEIVED

WESTVACO CORPORATION
COMMENTS REGARDING PROPOSED
WEST VIRGINIA LEGISLATIVE REGULATIONS
STATE TAX DIVISION
TITLE 110, SERIES 1H, 1990
VALUATION OF TIMBERLAND AND MANAGED TIMBERLAND
Submitted October 30, 1990

110-1H-2.

2.2 While the intent of this section is clear and an admirable effort at making sure that the use-value method is an actual inducement to management, it seems unlikely that demanding a property be valued higher than markets will justify in order to insure that market derived values are not lower than income derived values will withstand a court challenge. As an example, this appears to mandate that property which fails to meet the "physically accessible for harvesting" criterion in the definition of "managed timberland" would have to be valued at least as highly as similar land that is accessible.

110-1H-3

3.2 Net income should be calculated net of casualty losses as well as management costs.

3.5 Potential yield in cords should only be part of the income calculation in those counties that have an actual market for cordwood.

3.6 Management cost appears to include animal depredation only when animal populations exceed "carrying capacity". Since loss is loss regardless of the status of an animal population, the definition should include all such depredations.

3.8 The defined phrase "owner of timber" does not appear elsewhere in the proposed regulations and is therefore irrelevant.

110-1H-7.

7.5 As in 3.2, net income potential should be net of casualty losses.

110-1H-9(a) This language is unclear as to what it intends to require. Suggest changing the word "documenting" to "indicating".