

**WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION**

Do Not Mark In This Box
Filing Date

FILED

1991 JUN 19 PM 3:52

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #7

Effective Date

July 1, 1991

NOTICE OF AN EMERGENCY RULE

AGENCY: STATE TAX DIVISION TITLE NUMBER: 110

CITE AUTHORITY: W. VA. CODE §11-10-1 ET SEQ.

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES _____ NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED _____

IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 1J

TITLE OF RULE BEING FILED AS AN EMERGENCY: APPRAISAL OF PRODUCING AND


RESERVE OIL AND NATURAL GAS PROPERTY FOR PERIODIC STATEWIDE

REAPPRAISAL FOR AD VALOREM TAX PURPOSES

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

W. VA. CODE §11-10-1(c) AUTHORIZES COUNTY ASSESSORS TO PLACE ON THE PROPERTY BOOKS PROPORTIONATELY UNIFORM PERCENTAGE CHANGES IN VALUES AND TO DO SO DURING THE TWO TAX YEARS PRECEDING THE TAX YEAR BEGINNING JULY 1, 1993. SECTION 11-10-7 REQUIRES ASSESSORS TO SUBMIT FOR APPROVAL AND USE BY JULY 1, 1991, PLANS FOR THE VALUATION OF ALL PROPERTY WITHIN THEIR RESPECTIVE COUNTY. IT IS NECESSARY FOR THE RULE TO BE IN EFFECT ON JULY 1, 1991 IN ORDER TO ASSURE THE UNIFORM APPRAISAL OF PRODUCING AND RESERVE OIL AND NATURAL GAS PROPERTY WITHIN THE STATE. AS A RESULT, THE PUBLIC WELFARE WILL BE PRESERVED. A PUBLIC COMMENT PERIOD WAS HELD APRIL 26, 1991 THROUGH MAY 27, 1991.


JOHN MELTON
ASSISTANT SECRETARY
TAX AND REVENUE

L. FREDERICK WILLIAMS, JR.
SECRETARY, TAX AND REVENUE
STATE TAX COMMISSIONER

Signature

Use Additional Sheets If Necessary.

9.30



State of West Virginia
Department of Tax and Revenue

Charleston 25305

FILED

1991 JUN 19 PM 3:36

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

GASTON CAPERTON
GOVERNOR

CONSENT TO FILE RULE

June 19, 1991

To Whom It May Concern:

Title of Rule: Appraisal Of Producing And Reserve Oil And
Natural Gas Property For Periodic Statewide
Reappraisals For Ad Valorem Property Tax
Purposes

Title Number: 110

Series Number: 1J

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

Signed this 19th day of June, 1991.

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

by

John Melton
Assistant Secretary
Department of Tax and Revenue



State of West Virginia
Department of Tax and Revenue

Charleston 25305

FILED

1991 JUN 19 PM 3:55

GASTON CAPERTON
GOVERNOR

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

STATEMENT OF PURPOSE

The purpose of the rule is to establish the procedure for the classification and valuation of producing and reserve oil and natural gas property for ad valorem property tax purposes.

FISCAL NOTE FOR PROPOSED RULES

FILED

1991 JUN 19 PM 3:36

Rule Title: Appraisal Of Producing And Reserve Oil And Natural Gas
Property For Periodic Statewide Reappraisal For Ad Valorem
Property Tax Purposes SECRETARY OF STATE

Type of Rule: X Legislative Interpretive Procedural

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:

There should be no fiscal impact beyond that envisioned by the Legislature when it enacted W. Va. Code § 11-1C-1 et seq.

3. Objectives of these rules:

The objective of the rule is to provide appropriate direction and guidelines relevant to the appraisal at market value of producing and reserve oil and natural gas property for ad valorem property tax purposes.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

There should be no economic impact.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of citizens...

The rule may result in an increase in property tax for local government units.

C. Economic Impact on Citizens/Public at Large.

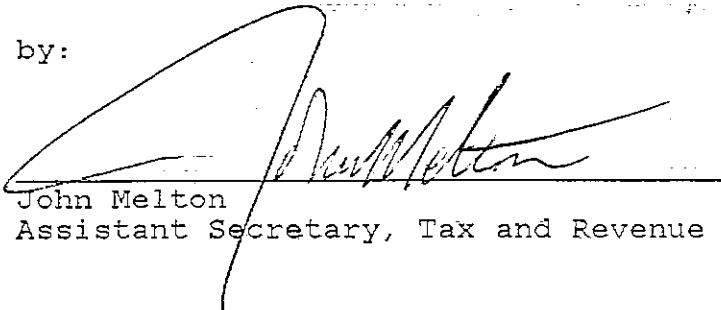
There should be no economic impact.

Date: June 19, 1991.

Signature of Agency Head or Authorized Representative

L. Frederick Williams, Jr.
Secretary, Tax and Revenue
State Tax Commissioner

by:


John Melton
Assistant Secretary, Tax and Revenue

DATE: JUNE 19, 1991
TO: LEGISLATIVE RULE-MAKING COMMITTEE
FROM: STATE TAX DIVISION

FILED
1991 JUN 19 PM 3:36

EMERGENCY RULE TITLE: APPRAISAL OF PRODUCING AND RESERVE OIL AND NATURAL GAS PROPERTY FOR PERIODIC STATEWIDE REAPPRAISAL FOR AD VALOREM PROPERTY TAX PURPOSES

1. Date of filing: June 19, 1991
2. Statutory authority for promulgating the emergency rule: W. Va. Code § 11-1C-1 et seq.
3. Date of filing of proposed legislative rule: April 26, 1991
4. Does the emergency rule adopt new language or does it amend or repeal a current legislative rule?
No
5. Has the same or similar emergency rule previously been filed and expired?
No
6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.
All assessors are required to comply on July 1, 1991 with valuation plans filed and approved prior to July 1, 1991. Assessors cannot properly value producing and reserve oil and natural gas property without the use of this rule. Failure to provide uniform statewide valuation procedures will result in nonuniform valuations and cause the entire reappraisal of property to be questioned. This rule will provide necessary assistance, thereby preserving public confidence in property valuations and, as a result, preserving the public welfare.
7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.
Additionally, W. Va. Code § 11-1C-7 requires assessors to immediately commence using the new valuation plans. That activity cannot properly occur without the use of this rule.
8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.
N/A

EMERGENCY
WEST VIRGINIA LEGISLATIVE REGULATIONS
DEPARTMENT OF TAX AND REVENUE
TITLE 110
SERIES 1J
1991

FILED
1991 JUN 19 PM 3:36
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

APPRAISAL OF PRODUCING AND RESERVE OIL AND NATURAL GAS PROPERTY FOR PERIODIC
STATEWIDE REAPPRAISALS FOR AD VALOREM PROPERTY TAX PURPOSES

Filed: June 19, 1991

§ 110-1J-1. General.

1.1 Scope. - These emergency regulations clarify and implement State law as it relates to the appraisal at market value of producing and reserve oil and natural gas properties.

1.2 Authority. - W. Va. Code § 11-10-1 et seq.

1.3 Filing Date. - June 19, 1991.

1.4 Effective Date. -

§ 110-1J-2. Introduction. - Oil and/or natural gas is one of the several estates in real property which may be owned either as a separate interest in real property or in conjunction with other interests, usually as fee ownership, oil and/or natural gas ownership or as minerals ownership. If oil and/or natural gas is owned as a separate estate, West Virginia property tax law requires such ownership to be listed, valued and taxed based on its true and actual value. If the interest in oil and/or natural gas is part of a larger interest in a tract of property, the value of the oil and/or natural gas interest shall be included in the value of the larger interest. Oil and/or natural gas may be owned without being produced. Oil and/or natural gas rights may exist where no oil and/or natural gas is actually present, or where the oil and/or natural gas is unproducibile or depleted.

2.1 Categories for valuing oil and/or natural gas properties. - Parcels of property thought to bear oil and/or natural gas or having the oil and/or natural gas mineral interest separated from the fee of the property will be classified as producing property; non-producing property; plugged and abandoned property.

§ 110-1J-3. Definitions. - As used in these regulations and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, and shall apply in the singular or in the plural.

3.1 "Bands of investment discount component" means a discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing.

3.2 "Discount component" means a rate reflecting a provision for returning to an investor a sum of money equal to the aggregate of the anticipated return-on-investment over the economic life of an investment.

3.3 "Flush Production" means the production of oil and/or natural gas from any well on a producing oil and/or natural gas producing property with an initial production date that is two (2) years or less prior to the date of valuation.

3.4 "Management rate" means a rate reflecting a return to an investor for the management of similar investment portfolios.

3.5 "Market comparison discount" means a discount rate derived by dividing income net of the recapture component and property taxes by the arms-length selling price of the property.

3.6 "Natural gas producing property" means the property from which natural gas has been produced or extracted at any time during the most recent assessment year. Natural gas producing property includes the interest or interests underlying an area of one hundred twenty-five (125) acres of surface per well for property with active wells on the parcel. Also to be included on natural gas producing property is the parcel acreage above one hundred twenty-five (125) acres per well, to be valued at a specific rate per acre, determined by the Department of Tax and Revenue; such rate not to exceed the average producing rate per acre of the property.

3.7 "Nonliquidity rate" means a rate reflecting a return to an investor representing the loss of interest on an investment arising from the time required to sell the investment.

3.8 "Oil and/or natural gas, non-producing property" means properties that were not engaged in production during the previous assessment year period of July 1 through June 30. This category shall include any acreage that has been shut-in for the entire year. This category shall also include any acreage owned by a company or individual whose primary business involves the production or leasing of any oil and gas properties.

3.9 "Oil and/or natural gas plugged and abandoned property" means the one hundred twenty-five (125) acres of surface per well of natural gas or the forty (40) acres of surface per well of oil producing properties if the well has been plugged and abandoned as required by W. Va. Code § 22-4-1 et seq.

3.10 "Oil Producing Property" means property from which oil has been produced or extracted at any time during the most recent assessment year. Oil producing property includes the interest or interests underlying an area of up to forty (40) acres of surface per well with one or more active well(s) on the parcel. Also to be included on oil producing property is the parcel acreage above the forty (40) acres per well, to be valued at a specific rate per acre determined by the Department of Tax and Revenue; such rate not to exceed the producing rate per acre of the property.

3.11 "Overriding royalty" means the fractional interest reserved or purchased by a seller of a lease to another party, thereby participating in the

gross proceeds of production from the lease while at the same time not incurring operating expenses.

3.12 "Personal Property" used in oil and/or natural gas production means machinery and equipment in and about the well and all other tangible personal property used in producing oil and/or natural gas from the well. It shall not include vehicles or other tangible personal property not permanently used in production.

3.13 "Producer/Operator" means any person or persons, corporation, partnership, joint venture or other enterprise which proposes to or does locate, drill, manage or abandon any well.

3.14 "Property tax component" means a rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the economic life of an investment.

3.15 "Recapture component" means a rate reflecting a provision for returning to an investor a sum of money equal to his investment.

3.16 "Risk rate" means a rate reflecting a return to an investor necessary to attract capital to an investment containing a possible loss of principal and/or interest.

3.17 "Royalty Interest" means the fractional interest in oil and/or natural gas production not subject to operating expenses and retained by the oil and/or natural gas rights owner or lessor.

3.18 "Safe rate" means a rate reflecting a return to an investor on an investment which has little, if any, likelihood of loss of principal or of loss in anticipated return on investment.

3.19 "Settled Production" means the production of oil and/or natural gas from all wells on a producing property with an initial production date that is more than two (2) years prior to the date of valuation.

3.20 "Storage wells" means any property used as a reservoir for the storage of natural gas. These properties shall be valued as non-producing natural gas property, such value not inclusive of inventories stored therein.

3.21 "Summation discount component" means a discount rate expressed as the aggregate of a safe rate, risk rate, nonliquidity rate, and management rate.

3.22 "Working Interest" means the fractional interest in oil and/or natural gas production subject to operating expenses and owned by the leasehold or operator.

§ 110-1J-4. Methods of valuation.

4.1 General. - Oil and/or natural gas producing property value shall be determined through the process of applying a yield capitalization model to the net receipts for the working interest and a yield capitalization model applied to the gross royalty receipts for the royalty interest. Where ownership is

split through a lease or royalty arrangement, different values will be determined for the working interest and the royalty interest. Each term in this valuation is discussed below.

4.2 Percentage interest in oil and/or natural gas. - Where the ownership of oil and/or natural gas in place is divided through a lease or other arrangement, the compensation to the owner of the property is derived by designating a percentage of the production to be the royalty payment to the owner. The remainder is the working interest. The Tax Commissioner will annually determine an assumed standard working and royalty percentage interest through a review of oil and gas leases from throughout the State.

4.3 Average production rate. - Gas - The Tax Commissioner will annually determine and report the production rate of natural gas wells through review of information filed with other State agencies and data provided by companies and individuals. Oil - The average daily production of an oil well is its production rate, measured in terms of oil field standard forty-two (42) gallon barrels, for the year preceding the annual tax assessment date, divided by the number of full or partial days of well production. Partial days shall include time allowed for oil to collect between pumpings. Full or partial days shall not include time when well non-production results from workover, redrilling, or well maintenance.

4.4 Average industry market price. - Oil - The Tax Commissioner will annually derive the average industry market price by reviewing the price per barrel paid by the major West Virginia crude oil purchasers. The Tax Commissioner's annual report on the average industry market price should reflect a reduction for average Federal Windfall Profits Tax and West Virginia Severance Taxes deemed to be paid by the working or royalty interests in the production. The average industry market price will be used in the method described in the regulations for determination of the formulas to be used to appraise oil production properties.

Gas - The Tax commissioner will annually derive and report the average industry market price by reviewing the price paid per MCF by the major West Virginia natural gas purchasers, a survey of oil and gas associations, and other statistical data.

4.5 Average industry operating expenses. - The Tax Commissioner will annually determine the average industry operating expenses per well. The average industry operating expenses will be deducted from gross receipts in developing an income stream for application of a yield capitalization procedure.

4.6 Average industry production decline rates. - The Tax Commissioner will annually derive and report the average industry production decline rates by a review of well production records of various State agencies and data provided by companies and individuals.

4.7 Capitalization rate. - A capitalization rate will be developed considering the three (3) components set out in Section 4.7.1 of these regulations. This rate will be used to select the factor(s) from a standard mid-year life present worth of one table using a compound interest premise.

4.7.1 Discussion. - The capitalization rate will be determined annually by the Tax Commissioner through the use of generally accepted methods for estimating such rates. The rate so developed will be applied to a declining-terminal income series which is indicative of oil and/or natural gas producing properties. The capitalization rate used to value oil and/or natural gas properties will be developed considering (1) a discount rate determined primarily by the summation technique, (2) a recapture component, and (3) a property tax component.

4.7.1.1 Discount component.

4.7.1.1.a Summation technique. - The summation technique will be given primary consideration in the valuation of oil and/or natural gas producing property. The summation technique will determine a discount component which will be used to calculate the present value of the future income of the oil and/or natural gas producing property utilizing the following four (4) major subcomponents:

- 4.7.1.1.a.1 Safe rate
- 4.7.1.1.a.2 Risk rate
- 4.7.1.1.a.3 Nonliquidity rate
- 4.7.1.1.a.4 Management rate

The "Safe rate" will be developed through review of quarterly interest rates offered on thirteen (13) week United States Treasury Bills for a period of one (1) year prior to the appraisal date. The "Risk rate" will be developed through review of data resulting from an annual survey of lending institutions, such survey reflecting interest rates required on loans for acquisition and/or development of natural resource producing properties. This survey will be conducted for a one (1) year period prior to the appraisal date. Results of the survey will be compared to quarterly interest rates offered on thirteen (13) week United States Treasury Bills for the same one (1) year period. An interest differential will then be selected representing the "Risk rate" assignable to various financing tiers. The "Nonliquidity rate" will be developed through an annual survey to determine a reasonable estimate of time that oil properties remain on the market before being sold. The market time thus determined will be used to identify United States Treasury Bills with similar time differentials in excess of thirteen (13) week Treasury Bills. The interest differential between these securities will be deemed to be representative of the "Nonliquidity rate." The "Management rate" will be developed through a survey to identify charges for the management of similar investment portfolios.

4.7.1.1.b Bands-of-investment/market comparison. - Data permitting, the bands-of-investment and market comparison techniques will be used to verify the summation discount component.

4.7.1.2 Recapture component. - Construction of the discount models will be accomplished through access of a standard mid-year life present worth of one table, premised on a compound interest rate. This table has a

factor for recapture built into the table coefficients. Inclusion of a recapture component in the capitalization rate is therefore not appropriate.

4.7.1.3 Property tax component. - This component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class III property.

4.8 Yield capitalization model. - A yield capitalization model will be developed for each producing property. The model will use as a beginning point gross receipts from each producing well. Gross receipt will be proportionately reduced by application of the appropriate production decline rate, referenced in Section 4.6 of these regulations, to yield a declining terminal income series typical of the producing area. The income series will be apportioned to the working interest and to the royalty interest based upon percentage interests referenced in Section 4.2 of these regulations.

4.8.1 Working interest model. - The working interest income series referenced in Section 4.8 of these regulations will be reduced by the annual operating expenses referenced in Section 4.5 of these regulations to yield a net income series. The net income series will be discounted by applying, on an annual basis, a mid-year life Inwood coefficient reflecting the capitalization rate referenced in Section 4.7 of these regulations. The summation of the annual discounted income streams will be the market value estimate for the working interest of the producing oil and/or natural gas well for an area of up to one hundred twenty-five (125) acres for producing natural gas wells and forty (40) acres for producing oil wells.

4.8.2 Royalty interest model. - The royalty interest income series referenced in Section 4.8 of these regulations will be discounted by applying, on an annual basis, a mid-year life Inwood coefficient reflecting the capitalization rate referenced in Section 4.7 of these regulations. The summation of the annual discounted income streams will be the market value estimate for the royalty interest of the producing oil and/or natural gas well for an area of up to one hundred twenty-five (125) acres for producing natural gas wells and forty (40) acres for producing oil wells.

4.9 Valuation of non-producing acreage. - The value per acre of non-producing acreage shall equal the discounted annual lease payment per acre. A valuation schedule for non-producing properties will be determined annually by the Tax Commissioner on a county basis where data is available. The Tax Commissioner will annually conduct a review of oil and/or natural gas agreements transacted at arms length in all fifty-five (55) counties to determine the annual lease payment per acre, as well as the lease term, that oil and gas properties in the county typically command. The per-acre value for non-producing property will be the sum of the projected annual income stream during the lease term discounted in each year by a capitalization rate.

4.10 Valuation of plugged and abandoned acreage. - Plugged and abandoned acreage will be valued at the nominal rate of one dollar (\$1.00) per acre. This category includes any plugged and abandoned acreage of up to one hundred twenty-five (125) acres per gas well and forty (40) acres per oil well.

4.11 Valuation of wells that produce both oil and gas. - The valuation of these producing wells shall be determined by use of the methods described herein for oil and natural gas. These values shall then be summed to result in the overall value of the oil and/or natural gas producing acreage.

4.12 Annual reports. - The Tax Commissioner will publish an annual report for the variables to be considered in arriving at the value of the specific oil and/or natural gas related property. This report will be filed with the office of the Secretary of State on or before May 31st of each year, followed by a fifteen (15) day period for written public comment. The Tax Commissioner will review the comments and present final variables and multipliers to be used on or before July 1.

4.13 Active farm properties. - The oil and gas rights, that are part of a "fee" estate where the use of the surface has qualified as an active farm, will be valued in the following manner: (For a definition of an active farm see § 110-1R-1 et seq.)

4.13.1 Where income or royalty is not derived from the oil and gas rights the oil and gas interest shall not be valued.

4.13.2 Where income or royalty is derived from the oil and gas rights the oil and gas interest shall be valued as follows:

4.13.2.1 Fee estates, where the annual wholesale value of farm commodities or products is fifty percent (50%) or more of the usual annual gross income from all uses of the property, shall be subject to farm use valuation. Thus oil and gas interests shall not be valued under this situation.

4.13.2.2 Fee estates, where the annual wholesale value of farm commodities or products is less than fifty percent (50%) of the usual annual gross income from all uses of the property, shall be valued by adding the applicable oil and gas values referenced in this rule to the surface farm use value.

4.14 Property reports. - Prior to September 1 of each year the producer and oil and gas owner will be required to file a report with the Department of Tax and Revenue for each county where the oil and gas property is to be assessed. These reports will be designed by the State Tax Commissioner so that information pertinent to the valuation of such producing property, non-producing property, and plugged and abandoned property will be reported by the oil and gas producer, lessee, and owner.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

FILED IN THE OFFICE OF
THE SECRETARY OF STATE

July 1, 1991

THIS DATE July 1, 1991
ADMINISTRATIVE LAW DIVISION

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: State Tax Division

RULE: New Rules, Series 1J Appraisal of Producing and Reserve Oil and Natural Gas Property for Periodic Statewide Re-appraisal for Ad Valorem Tax Purposes

DATE RULE FILED AS AN EMERGENCY RULE: June 19, 1991

DECISION NO. 35-91

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
Secretary of State

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

ROBERT E. WILKINSON
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 345-4000
Corporations: 342-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

SHEREE COHEN
Special Assistant

(Plus all the volunteer
help we can get)

DECISION

EMERGENCY RULE DECISION
(ERD 35-91)

AGENCY: State Tax Division

RULE: New Rule, Series 1J, New Rule, Series 1J, Appraisal of Producing and Reserve Oil and Natural Gas Property for Periodic Statewide Reappraisal for Ad Valorem Tax Purposes

FILED AS AN EMERGENCY RULE: June 19, 1991

- par. 1 The State Tax Division has filed the above new rule as an emergency.
- par. 2 West Virginia Code 29A-3-a 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 of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-a(a))].
- par. 4 (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. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision 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. 6 The Tax Division filed this emergency rule with supporting documents with the Secretary of State June 19, 1991 and with the LRMRC June 19, 1991.

par. 7 It is the determination of the Secretary of State that the Tax Division has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §11-1C-1 reads:

(a) The Legislature hereby finds and declares that all property in this state should be fairly and equitably valued wherever it is situated so that all citizens will be treated fairly and no individual species or class of property will be overvalued or undervalued in relation to all other similar property within each county and throughout the state.

(b) The Legislature by this article seeks to create a method to establish and maintain fair and equitable values for all property. The Legislature does not intend by this article to implement the reappraisal as conducted under §§11-1A-1 et seq. and 11-1B-1 et seq. of this chapter nor does it intend to affect tax revenue in any manner.

(c) The Legislature finds that requiring the valuation of property to occur in 3 year cycles with an annual adjustment of assessments as to those properties for which a change in value is discovered shall not violate the equal and uniform provision of section one, article ten of the West Virginia Constitution, the Legislature further finding that such 3 year cycle and annual adjustment are an integral and indispensable part of a systematic review of all properties in order to achieve equality of assessed valuation within and among the counties of this state. Notwithstanding such finding, the Legislature intends to permit the assessors and the board of public works to place proportionately uniform percentage changes in values on the books during the 2 tax years preceding the tax year beginning on the first day of July, 1993, in accordance with the provisions of §11-1C-7 et seq. of this article.

(d) The Legislature deems that the goal of this article is that by the end of the 3 year cycle contemplated by this article, and hereafter from year to year, all property shall be annually assessed at 60% of its then current fair market value except for the values derived for farms and managed timberland properties, which are to be valued as prescribed by §§11-1C-1 et seq. and 11-4-1 et seq. of this chapter.

par. 9 WV Code further states in §11-1C-5:

(a) In addition to the powers and duties of the tax commissioner in other provisions of this article and code, the tax commissioner shall have the power and duty to:

(1) Perform such duties and exercise such powers as may be necessary to accomplish the purposes of this article;

(2) Determine the methods of valuation for both real and personal property in accordance with the following:

(A) As to personal property, the tax commissioner shall provide a method to appraise each major specie of personal property in the state so that all such items of personal property are valued in the same manner no matter where situated in the state, shall transmit these methods to each county assessor who shall use these methods to value the various species of personal property. The tax commissioner shall periodically conduct such studies as are necessary to determine that such methods are being followed. Such method shall be in accordance with the provisions of §11-5-1 et seq. of this chapter: Provided, That notwithstanding any other provision of this code to the contrary, the several county assessors shall appraise motor vehicles as follows: The state tax commissioner shall annually compile a schedule of automobile values based upon the lowest values shown in a nationally accepted used car guide, which said schedule shall be furnished to each assessor and shall be used by the several county assessors to determine the assessed value for all motor vehicles in an amount equal to 60% of said lowest values.

par. 10 It is the determination of the Secretary of State that the Tax Division has not exceeded its statutory authority in promulgating this emergency rule.

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.

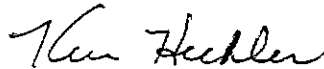
par. 13 The facts and circumstances as presented by the Tax Division are as follows:

W. Va. Code §11-1C-1(c) authorizes county assessors to place on the property books proportionately uniform percentage changes in values and to do so during the two tax years preceding the tax year beginning July 1, 1993. Section 11-1C-7 requires assessors to submit for approval and use by July 1, 1991, plans for the valuation of all property within their

respective county. It is necessary for the rule to be in effect on July '99' in order to assure the uniform appraisal of producing and reserve oil and natural gas property within the state. As a result, the public welfare will be preserved. A public comment period was held April 26, 1991 through May 27, 1991.

par. 14 It is the determination of the Secretary of State that this proposal qualifies under the definition of an emergency as defined in §29A-3-15(g). . . "immediate preservation of public peace, health, safety or welfare" and "time limitation."

par. 15 This decision shall be cited as Emergency Rule Decision 35-91 or ERD 35-91 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the State Tax Division, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER
Secretary of State

Entered _____

FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 1, 1991
ADMINISTRATIVE LAW DIVISION