WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF WEST VIRGINIA
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NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AGENCY: STATE TAX DIVISION TITLE NUMBER: 110

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 NEW RULE BEING PROPOSED: 1J

TITLE OF RULE BEING PROPOSED: APPRAISAL OF PRODUCING AND RESERVE OIL AND NATURAL GAS PROPERTY FOR PERIODIC STATEWIDE REAPPRAISALS FOR AD VALOREM PROPERTY TAX PURPOSES

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 1

SECTION 64-7-6(nn), PASSED ON MARCH 14, 1992.

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON THE FOLLOWING DATE: APRIL 15, 1992

JAMES H. PAIGE, III
TAX COMMISSIONER

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

State of West Virginia
Department of Tax and Revenue

Charleston 25305

GASTON CAPERTON
GOVERNOR

JAMES H. PAIGE III
SECRETARY

CONSENT TO FILE RULE

April 10, 1992

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 10th day of April, 1992.

James H. Paige, III
Secretary, Tax and Revenue

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATIVE REGULATIONS
DEPARTMENT OF TAX AND REVENUE
TITLE 110
SERIES 1J
APRIL 15, 1992

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

§ 110-1J-1. General.

1.1 **Scope.** - These 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 § 11-1C-1 et seq.

1.3 **Filing date.** - April 15, 1992.

1.4 **Effective date.** - April 15, 1992.

§ 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 unproducible 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 up to 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 in excess of one hundred twenty-five (125) acres per well, to be valued at the non-producing rate per acre referenced in Section 4.9 of those regulations; such rate however 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 up to one hundred twenty-five (125) acres of surface per well of natural gas or up to 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 § 22B-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 in excess of forty (40) acres per well, to be valued at the non-producing rate per acre referenced in Section 4.9 of these regulations; such rate however 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. Natural gas inventory stored therein shall be valued separately.

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 (generally one-eighth) of the production to be the royalty payment to the owner. The remainder (generally seven-eighths) is the working interest. The Tax Commissioner will annually determine a typical 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 shall 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. The Tax Commissioner's annual report on the average industry market price shall 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.

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 up to 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 up to 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 average 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 up to 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.

Bill Tax, Reappraisal 110-1J

H. B. 4329

(By Delegate Grubb)

(Introduced January 27, 1992; referred to the Committee on the Judiciary)

A BILL to amend and reenact section six, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the state tax commissioner to promulgate legislative rules relating to the appraisal of producing and reserve oil and natural gas property for periodic statewide reappraisals for ad valorem property tax purposes.

Be it enacted by the Legislature of West Virginia:

That section six, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-6. Tax department.

1 (a) The legislative rules filed in the state register on the
2 fifth day of January, one thousand nine hundred eighty-four,
3 relating to the state tax commissioner (appraisal of property for
4 periodic statewide reappraisals for ad valorem property tax
5 purposes), are authorized with the amendments set forth below:
6 On page 8, section 11.04 (b)(2), definition of "Active Mining
7 Property," at the end of the first paragraph following the
8 period, by adding the following: "In the application of the
9 herein provided valuation formula on 'active mining property,'
10 the appropriate formula calculation will be based upon the actual
11 market to which the coal from that tract and seam is currently
12 being sold, whether it is 'metallurgical' or 'steam'."
13 On page 9, section 11.04 (b)(3), definition of "Active
14 Reserves," at the end of the subsection, following the period, by
15 adding the following: "In the application of the herein provided
16 valuation formula on 'active reserves,' the appropriate formula
17 calculation will be based upon the actual market to which the
18 coal from that tract and seam is currently being sold, whether it
19 is 'metallurgical' or 'steam'."
20 On page 11, section 11.04 (b)(11), definition of "Mineable
21 Coal," by striking the subsection and substituting in lieu
22 thereof the following: "(11) Mineable Coal. Coal which can be
23 mined under present day mining technology and economics."
24 On page 25, section 11.04 (c)(2)(C), entitled "Property Tax
25 Component," by striking the subsection and inserting in lieu

1 thereof the following: "(C) Property Tax Component -- This
2 component will be derived by multiplying the assessment rate by
3 the statewide average of tax rates on Class III property."
4 On page 30, section 11.04 (c)(4), entitled "Valuation of
5 Mined-Out/Unmineable/Barren Coal Properties," by striking the
6 numbers "$5.00" and inserting in lieu thereof the following:
7 "$1.00."
8 On page 31, section 11.04 (c)(5)(B), by striking the words
9 and numbers "Five Dollars ($5.00)" and inserting in lieu thereof
10 the following: "One Dollar ($1.00)."
11 On page 53, section 11.05 (h) by striking the symbol and
12 figures "($5.00)" and inserting in lieu the following:
13 "($1.00)."
14 On page 73, section 11.06 (h) by striking the symbol and
15 figures "$5.00" and inserting in lieu the following: "$1.00."
16 On page 81, section 11.07 (e)(15)(B)(4) at the end of the
17 second sentence remove the period after the word "property" and
18 insert the words "unless the land is used for some other purpose
19 in which case it will be taxed according to its actual use."
20 On page 86, section 11.07 (k) delete all of subsection (k).
21 On page 110, section 11.08 (c)(4) by striking the symbol and
22 figures "$5.00" and inserting in lieu thereof the following:
23 "$1.00."

1 On page 111, section 11.08 (c)(5)(B) by striking the symbol
2 and figures "$5.00" and inserting in lieu thereof the following:
3 "$1.00."
4 On page 115, section 11.09 (a)(3) in the first sentence,
5 insert after the word "land" the words "excluding farmland."
6 (b) The legislative rules filed in the state register on the
7 twenty-eighth day of September, one thousand nine hundred
8 eighty-four, relating to the state tax commissioner (estimated
9 personal income tax), are authorized with the amendments set
10 forth below:
11 55.02(a)(2)(on page 182.2) line 18, after the word
12 "profession" strike the words "on his own account" and the
13 comma(,).
14 55.12(b)(1)(page 182.35) at the end of the section, change
15 the period to a comma, and add the following language: "and in
16 the case of a court appointed agent, a copy of the court order of
17 appointment is sufficient."
18 55.12(c)(page 182.36) after the word "for," strike the word
19 "erroneous."
20 (c) The legislative rules filed in the state register on the
21 twenty-eighth day of September, one thousand nine hundred
22 eighty-four, modified by the state tax commissioner to meet the
23 objections of the legislative rule-making review committee and
24 refiled in the state register on the fourteenth day of November,
25 one thousand nine hundred eighty-four, and on the twenty-first

1 day of March, one thousand nine hundred eighty-five, relating to
2 the state tax commissioner (estimated corporation net income
3 tax), are authorized.

4 (d) The legislative rules filed in the state register on the
5 twelfth day of March, one thousand nine hundred eighty-five,
6 relating to the state tax commissioner (identification and
7 appraisal of farmland subsequent to the base year of statewide
8 reappraisal), are authorized and directed to be promulgated with
9 the following amendments:

10 Title page, Subject; following the word "Farmland," insert
11 the words "and of Structures Situated Thereon."

12 Page i, Subject; following the word "Farmland," insert the
13 words "and of Structures Situated Thereon."

14 Page i, TABLE OF CONTENTS, Section 10; following the words
15 "Valuation of Farmland" add the words "and of Structures Situated
16 Thereon."

17 Page 10.1, Title; following the word "FARMLAND" insert the
18 words "AND STRUCTURES SITUATED THEREON."

19 Page 10.1, Section 10, Title; following the word "Farmland"
20 add the words "and Structures Situated Thereon."

21 Page 10.1, Section 10.01(b); following the word "farmland"
22 insert the words "and structures situated thereon."

23 Page 10.2, Section 10.02(a), first sentence; following the
24 word "farmland" insert the words "and structures situated
25 thereon."

1 Page 10.3, Section 10.02(b), first sentence; following the
2 word "farmland" insert the words "and structures situated
3 thereon." Delete the words "for purposes of the statewide
4 reappraisal."
5 Page 10.3, Section 10.02(b), last sentence; following the
6 word "farmland" insert the words "and structures situated
7 thereon."
8 Page 10.8, Section 10.04(5)(B), last sentence; delete the
9 period and add "or the incapability to be adapted to alternative
10 uses."
11 Page 10.9, Section 10.04(6), first sentence; following the
12 words "land currently being used" insert the words "as part of a
13 farming operation."
14 Page 10.9, Section 10.04(6), following the last sentence; add
15 the sentence "For the purposes of this definition, 'contiguous
16 tracts' are farmlands which are in close proximity, but not
17 necessarily adjacent: **Provided,** That all such contiguous tracts
18 are operated as part of the same farm management plan."
19 Page 10.10, Section 10.04(8), is amended to read in its
20 entirety as follows:
21 "(8) Farm buildings. -- The term 'farm buildings' shall mean
22 structures which directly contribute to the operation of the
23 farm, and shall include tenant houses and quarters furnished farm
24 employees without rent as a part of the terms of their
25 employment."

1 Page 10.11, Section 10.04; delete the word "November" and
2 insert in lieu thereof the word "September." Delete the period
3 following the word "valuation" and add the words, "for the
4 assessment year beginning July first of each year."
5 Page 10.11, Section 10.04, insert the following subdivision;
6 "(12) Application Form: The application form required to be
7 filed with the assessor on or before September first of each year
8 shall require certification that the farm complies with criteria
9 set forth in Section 10.05(c) of these regulations, and renewal
10 applications from year to year shall be sufficient upon statement
11 certifying that no change has been made in the use of farm
12 property which would disqualify 'farm use' classification for
13 assessment purposes." Renumber the subdivisions of Section 10.04
14 following the new 10.04(12); formerly 10.04(12) through
15 10.04(28), to 10.04(13) through 10.04(29), respectively.
16 Page 10.14, Section 10.04(28) (formerly 10.04(27)); following
17 the words "woodland products" insert a comma and the words "such
18 as nuts or fruits harvested" and add a comma following the words
19 "human consumption" on Page 10.15.
20 Page 10.16, Section 10.05, subsection (a), following the
21 words "land is used for farm purposes" by striking the period and
22 inserting in lieu thereof a colon and the following: **"Provided,**
23 That the true and actual value of all farm used, occupied and
24 cultivated by their owners or bona fide tenants shall be arrived
25 at according to the fair and reasonable value of the property for

1 the purpose for which it is actually used regardless of what the
2 value of the property would be if used for some other purpose;
3 and that the true and actual value shall be arrived at by giving
4 consideration to the fair and reasonable income which the same
5 might be expected to earn under normal conditions in the locality
6 wherein situated, if rented: **Provided, however,** That nothing
7 herein shall alter the method of assessment of lands or minerals
8 owned by domestic or foreign corporations."

9 Page 10.16, Section 10.05(b), first clause; following the
10 words "following factors shall be" insert the words "indicative
11 of but not conclusive" and delete the word "considered."

12 Page 10.16, Section 10.05(b)(2); delete the period and add
13 the words "such as soil conservation, farmland preservation or
14 federal farm lending agencies."

15 Page 10.17, Section 10.05(b)(7); delete the section and
16 insert in lieu thereof the words "(7) Whether or not the farmer
17 practices 'custom farming' on the land in question."

18 Page 10.17, Section 10.05(b)(9); following the word "type"
19 add a comma and insert the word "utility."

20 Page 10.17, Section 10.05(b)(11), first sentence; following
21 the word "sales" insert the words "for nonfarm uses."

22 Page 10.17, Section 10.05(b)(12)(A); following the words
23 "part of" insert the words "or appurtenant to."

24 Page 10.17, Section 10.05(b)(12)(B); following the words
25 "contiguous to" insert the words "or operated in common with."

1 Page 10.18, Section 10.05, subsection (c), the first sentence
2 of which is amended in its entirety to read as follows:
3 "Qualifying farmland and the structures situated thereon shall be
4 subject to farm use valuation, with primary consideration being
5 given to the income which the property might be expected to earn,
6 in the locality wherein situate, if rented."
7 Page 10.18, Section 10.05(b)(12)(B); delete the semicolons
8 and the words "it was purchased at the same time as the tract so
9 used."Delete the period following the word "purposes" and add the
10 words "or any nonfarm use."
11 Page 10.19, Section 10.05(c)(2); following the words
12 **"Provided,** That no" delete the word "reason" and insert in lieu
13 thereof the words "individual event."
14 Page 10.20, Section 10.05(c)(4)(C); following the words
15 "(1,000) minimum production value" insert the words "or the small
16 farm five hundred dollars ($500) minimum production and sale."
17 Page 10.23, Section 10.05(d)(3)(B), third sentence; following
18 the word "If" insert the words "timber from." Delete the period
19 following the word "purpose" and add the words "or is being
20 converted to farm production uses."
21 Page 10.26, Section 10.05(f)(2) is amended in its entirety to
22 read as follows:
23 "(2) Farm buildings. -- Rental value of farm buildings and
24 other improvements on the farmland shall be valued by determining
25 the replacement cost of the building or structure by usual farm

1 construction practices, and farm labor standards and subtracting
2 therefrom depreciation.[1] Both of these determinations shall be
3 made in accordance with the tax department's real property
4 appraisal manual[2] as filed in the state register in accordance
5 with chapter 29A of the code of West Virginia, 1931, as amended,
6 and as it relates to agricultural buildings and structures. One
7 (1) acre of land shall be assigned to all buildings as a unit
8 situate on the property, regardless of the actual acreage
9 occupied by such buildings and shall be appraised at its farm-use
10 valuation based on the highest class of farmland present on the
11 farm."
12 Page 10.28, Section 10.05(f)(3)(B)(1); following the words
13 "or more of the" insert the word "usual."
14 Page 10.28, Section 10.05(f)(3)(B)(2); following the words
15 "(50%) of the" insert the word "usual."
16 Page 10.29, Section 10.05(f)(3)(C)(1)(a); following the words
17 "(50%) or more of the" insert the word "usual."
18 Page 10.29, Section 10.05(f)(3)(C)(1)(b); following the words
19 "(50%) of the" insert the word "usual."
20 Page 10.31, Section 10.05(f)(3)(C)(2)(b); following the last
21 sentence insert the sentence "An individual employed other than
22 in farming is not an unincorporated business."
23 Page 10.35, Section 10.07, Title; following the word
24 "Farmland" insert the words "and Structures Situated Thereon."

1 Page 10.35, Section 10.07(a), first sentence; following the
2 word "farmland" insert the words "and structures situated
3 thereon."
4 Page 10.46, Subject; following the word "Farmland" insert the
5 words "and Structures Situated Thereon."
6 (e) The legislative rules filed in the state register on the
7 twenty-second day of May, one thousand nine hundred eighty-five,
8 relating to the state tax commissioner (rules governing the
9 operation of a statewide electronic data processing system
10 network, to facilitate administration of the ad valorem property
11 tax on real and personal property), are authorized.
12 (f) The legislative rules filed in the state register on the
13 twenty-sixth day of March, one thousand nine hundred eighty-six,
14 relating to the state tax commissioner (listing of interests in
15 natural resources for the first statewide reappraisal; provision
16 for penalties), are authorized.
17 (g) The legislative rules filed in the state register on the
18 twenty-sixth day of March, one thousand nine hundred eighty-six,
19 modified by the state tax commissioner to meet the objections of
20 the legislative rule-making review committee and refiled in the
21 state register on the twelfth day of February, one thousand nine
22 hundred eighty-seven, relating to the state tax commissioner
23 (review of appraisals by county commissions sitting as
24 administrative appraisal review boards), are authorized.

1 (h) The legislative rules filed in the state register on the
2 twenty-sixth day of March, one thousand nine hundred eighty-six,
3 modified by the state tax commissioner to meet the objections of
4 the legislative rule-making review committee and refiled in the
5 state register on the twelfth day of February, one thousand nine
6 hundred eighty-seven, relating to the state tax commissioner
7 (review of appraisals by a circuit court on certiorari), are
8 authorized with the following amendment:
9 On page 3, §18.3.1 is stricken in its entirety and a new
10 §18.3.1 is inserted in lieu thereof to read as follows:
11 "18.3.1 Who May Request Review. -- The property owner, Tax
12 Commissioner, protestor or intervenor may request the county
13 commission to certify the evidence and remove and return the
14 record to the circuit court of the county on a writ of
15 certiorari. Parties to the proceeding wherein review by the
16 circuit court is sought shall pay costs and fees as they are
17 incurred: **Provided,** That the circuit court upon rendering
18 judgment or making any order may award costs to any party in
19 accordance with the provisions of W. Va. Code §53-3-5."
20 (i) The legislative rules filed in the state register on the
21 twenty-sixth day of March, one thousand nine hundred eighty-six,
22 modified by the state tax commissioner to meet the objections of
23 the legislative rule-making review committee and refiled in the
24 state register on the twelfth day of February, one thousand nine
25 hundred eighty-seven, relating to the state tax commissioner

1 (administrative review of appraisals by the state tax
2 commissioner), are authorized.
3 (j) The legislative rules filed in the state register on the
4 eighteenth day of August, one thousand nine hundred eighty-six,
5 modified by the state tax commissioner to meet the objections of
6 the legislative rule-making review committee and refiled in the
7 state register on the twelfth day of February, one thousand nine
8 hundred eighty-seven, relating to the state tax commissioner
9 (additional review and implementation of property appraisals),
10 are authorized.
11 (k) The legislative rules filed in the state register on the
12 eleventh day of August, one thousand nine hundred eighty-six,
13 relating to the state tax commissioner (guidelines for assessors
14 to assure fair and uniform personal property values), are
15 authorized.
16 (l) The legislative rules filed in the state register on the
17 eighteenth day of August, one thousand nine hundred eighty-six,
18 modified by the state tax commissioner to meet the objections of
19 the legislative rule-making review committee and refiled in the
20 state register on the tenth day of December, one thousand nine
21 hundred eighty-six, relating to the state tax commissioner
22 (registration of transient vendors), are authorized.
23 (m) The legislative rules filed in the state register on the
24 fourth day of February, one thousand nine hundred eighty-six,
25 modified by the state tax commissioner to meet the objections of

1 the legislative rule-making review committee and refiled in the
2 state register on the fourteenth day of January, one thousand
3 nine hundred eighty-seven, relating to the state tax commissioner
4 (business and occupation tax), are authorized.

5 (n) The legislative rules filed in the state register on the
6 fourteenth day of August, one thousand nine hundred eighty-seven,
7 modified by the state tax commissioner to meet the objections of
8 the legislative rule-making review committee and refiled in the
9 state register on the fourth day of November, one thousand nine
10 hundred eighty-seven, relating to the state tax commissioner
11 (telecommunications tax), are authorized.

12 (o) The legislative rules filed in the state register on the
13 fourteenth day of August, one thousand nine hundred eighty-seven,
14 relating to the state tax commissioner (business franchise tax),
15 are authorized.

16 (p) The legislative rules filed in the state register on the
17 seventeenth day of August, one thousand nine hundred
18 eighty-seven, modified by the state tax commissioner to meet the
19 objections of the legislative rule-making review committee and
20 refiled in the state register on the twenty-second day of
21 January, one thousand nine hundred eighty-eight, relating to the
22 state tax commissioner (consumers sales and service tax and use
23 tax), are authorized.

24 (q) The legislative rules filed in the state register on the
25 fourteenth day of August, one thousand nine hundred eighty-seven,

1 modified by the state tax commissioner to meet the objections of
2 the legislative rule-making review committee and refiled in the
3 state register on the thirteenth day of January, one thousand
4 nine hundred eighty-eight, relating to the state tax commissioner
5 (appraisal of property for periodic statewide reappraisals for ad
6 valorem property tax purposes), are authorized.

7 (r) The legislative rules filed in the state register on the
8 fourteenth day of August, one thousand nine hundred eighty-seven,
9 modified by the state tax commissioner to meet the objections of
10 the legislative rule-making review committee and refiled in the
11 state register on the twelfth day of January, one thousand nine
12 hundred eighty-eight, relating to the state tax commissioner
13 (severance tax), are authorized.

14 (s) The legislative rules filed in the state register on the
15 second day of September, one thousand nine hundred eighty-eight,
16 modified by the state tax commissioner to meet the objections of
17 the legislative rule-making review committee and refiled in the
18 state register on the twenty-fourth day of February, one thousand
19 nine hundred eighty-nine, relating to the state tax commissioner
20 (solid waste assessment fee), are authorized.

21 (t) The legislative rules filed in the state register on the
22 twelfth day of August, one thousand nine hundred eighty-eight,
23 modified by the state tax commissioner to meet the objections of
24 the legislative rule-making review committee and refiled in the
25 state register on the twenty-first day of September, one thousand

1 nine hundred eighty-eight, relating to the state tax commissioner
2 (electronic data processing system network for property tax
3 administration), are authorized.

4 (u) The legislative rules filed in the state register on the
5 nineteenth day of September, one thousand nine hundred
6 eighty-eight, modified by the state tax commissioner to meet the
7 objections of the legislative rule-making review committee and
8 refiled in the state register on the twenty-fourth day of
9 February, one thousand nine hundred eighty-nine, relating to the
10 state tax commissioner (exemption of property from ad valorem
11 property taxation), are authorized.

12 (v) The legislative rules filed in the state register on the
13 sixteenth day of September, one thousand nine hundred
14 eighty-eight, modified by the state tax commissioner to meet the
15 objections of the legislative rule-making review committee and
16 refiled in the state register on the thirteenth day of January,
17 one thousand nine hundred eighty-nine, relating to the state tax
18 commissioner (consumers sales and service tax and use tax), are
19 authorized.

20 (w) The legislative rules filed in the state register on the
21 twenty-third day of June, one thousand nine hundred eighty-nine,
22 relating to the state tax department (personal income tax), are
23 authorized.

24 (x) The legislative rules filed in the state register on the
25 twenty-ninth day of June, one thousand nine hundred eighty-nine,

1 relating to the state tax department (severance tax), are
2 authorized.
3 (y) The legislative rules filed in the state register on the
4 fourth day of August, one thousand nine hundred eighty-nine,
5 modified by the state tax department to meet the objections of
6 the legislative rule-making review committee and refiled in the
7 state register on the eleventh day of December, one thousand nine
8 hundred eighty-nine, relating to the state tax department (solid
9 waste assessment fee), are authorized.
10 (z) The legislative rules filed in the state register on the
11 fourteenth day of August, one thousand nine hundred eighty-nine,
12 modified by the department of tax and revenue to meet the
13 objections of the legislative rule-making review committee and
14 refiled in the state register on the twelfth day of December, one
15 thousand nine hundred eighty-nine, relating to the department of
16 tax and revenue (business franchise tax), are authorized.
17 (aa) The legislative rules filed in the state register on the
18 eleventh day of August, one thousand nine hundred eighty-nine,
19 modified by the department of tax and revenue to meet the
20 objections of the legislative rule-making review committee and
21 refiled in the state register on the eleventh day of December,
22 one thousand nine hundred eighty-nine, relating to the department
23 of tax and revenue (business and occupation tax), are authorized.
24 (bb) The legislative rules filed in the state register on the
25 fourteenth day of August, one thousand nine hundred eighty-nine,

1 modified by the department of tax and revenue to meet the
2 objections of the legislative rule-making review committee and
3 refiled in the state register on the nineteenth day of January,
4 one thousand nine hundred ninety, relating to the department of
5 tax and revenue (consumers sales and service tax and use tax),
6 are authorized with the amendments set forth below:

7 On page eight, Section 2.28, after the word "as" by inserting
8 the words "art, science,."

9 On pages eight and nine, Section 2.28.1, after the word
10 "intellectual" by deleting the word "or" and inserting in lieu
11 thereof the words "physical and."

12 On page nine, Section 2.28.2, by deleting the words "or
13 instruction."

14 On page nine, Section 2.28.2, after the word "training" by
15 adding the word "or."

16 On page nine, Section 2.28.2, by deleting the words "or any
17 portion of a school curriculum classified as physical education."

18 On page nine, by deleting all of Section 2.28.2.1.

19 On page nine, Section 2.28.2.2, by deleting the section
20 number.

21 On page nine, Section 2.28.2.2, by deleting the words "or
22 instruction."

23 On page nine, Section 2.28.2.2, after the word "training" by
24 adding the word "or."

On page nine, Section 2.28.2.2, after the word "conditioning" by inserting a period and striking the remainder of the sentence.

On page one hundred twelve, Section 59.2, after the words "sales of the service of cremation" by adding the words "sales on perpetual care trust fund deposits."

And,

On page one hundred twenty-eight, Section 91.2, after the words "include food" by inserting the following: ", as defined in section 2.30 of this rule,."

(cc) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (motor carrier road tax), are authorized.

(dd) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (gasoline and special fuel excise tax), are authorized.

(ee) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (corporation net income tax), are authorized.

(ff) The legislative rules filed in the state register on the eleventh day of August, one thousand nine hundred eighty-nine, modified by the department of tax and revenue to meet the objections of the legislative rule-making review committee and refiled in the state register on the eleventh day of December, one thousand nine hundred eighty-nine, relating to the department of tax and revenue (soft drinks tax), are authorized.

(gg) The legislative rules filed in the state register on the twenty-first day of February, one thousand nine hundred ninety-one, relating to the state tax commissioner (business investment and jobs expansion tax credit, corporations headquarters relocation tax credit, and small business tax credit), are authorized.

<u>(hh) The legislative rules filed in the state register on the eighteenth day of June, one thousand nine hundred ninety-one, modified by the state tax commissioner meet the objections of the legislative rule-making review committee and refiled in the state register on the tenth day of January, one thousand nine hundred</u>

ninety-two, relating to the state tax commissioner (appraisal of producing and reserve oil and natural gas property for periodic statewide reappraisals for ad valorem property tax purposes), are authorized.

NOTE: The purpose of this bill is to authorize the State Tax Commissioner to promulgate legislative rules relating to the appraisal of producing and reserve oil and natural gas property for periodic statewide reappraisals for ad valorem property tax purposes.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

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Deputy Secretary of State

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(Plus all the volunteer help we can get)

TO: John Montgomery

AGENCY: State Tax Department

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: January 13, 1993

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 1J TITLE: 110 State Tax Department

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

****

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED.

SIGNED: John M Montgomery

TITLE OF PERSON SIGNING: Attorney

DATE: 1-25-93

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.