

**WEST VIRGINIA**  
**SECRETARY OF STATE**

**KEN HECHLER**

**ADMINISTRATIVE LAW DIVISION**

Form #4

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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

**NOTICE OF RULE MODIFICATION OF A PROPOSED RULE**

AGENCY: State Tax Division TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§ 11-1C-5(a), 11-1C-5a and 11-1C-10(d)

AMENDMENT TO AN EXISTING RULE: YES  NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 1K


TITLE OF RULE BEING AMENDED: Valuation of Natural Resources Property

Other Than Coal, Oil or Natural Gas For Ad Valorem Property Tax Purposes

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: \_\_\_\_\_

TITLE OF RULE BEING PROPOSED: \_\_\_\_\_

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT, BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

  
Richard E. Boyle, Jr.  
State Tax Commissioner

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JAN 26 9 23 AM '98

TITLE 110  
LEGISLATIVE RULE  
DEPARTMENT OF TAX AND REVENUE OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SERIES 1K  
VALUATION OF NATURAL RESOURCES PROPERTY OTHER THAN  
COAL, OIL OR NATURAL GAS FOR AD VALOREM PROPERTY TAX PURPOSES

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§ 110-1K-1. General.

1.1 Scope. -- ~~These regulations clarify~~ This rule and implements State law as it relates to the appraisal at market value provides the methodology the Tax Commissioner shall use to determine the appraised value of natural resources properties other than coal, oil or natural gas for ad valorem property tax purposes. ~~Because these regulations provide context modifications of relevant parts of 110 C.S.R. 1 and such regulations with context changes were adopted by the Tax Commissioner W. Va. Code § 11-1C-5(b) eliminates the requirement that this filing be subject to the procedural requirements of W. Va. Code § 29A-3-1 et seq.~~

1.2 Authority. -- W. Va. Code §§ 11-1C-5(a) and (d), 11-1C-5a and 11-1C-10(d).

1.3 Filing Date. --

1.4 Effective Date. -- This rule applies to tax years beginning on or after January 1, 1999.

§ 110-1K-2. Introduction.

2.1 ~~Other active~~ Natural resources interests, such as limestone, fireclay, dolomite, sandstone, shale, sand and gravel, and salt are some of the several estates in real property, ~~which~~ These estates may be owned either as a separate interest estate, or in conjunction with other interests estates, usually as fee ownership or as minerals ownership. ~~If the other active natural resources interest is~~ are owned as a separate estate, either absolute or as a leasehold interest, West Virginia property tax law requires ~~such~~ the ownership to be listed, valued and taxed based on its true and actual value.

2.2 Other West Virginia natural resources interests, such as lead, and zinc, manganese, iron ore, radioactive minerals, and oil shale, which at present are not being actively mined, shall be valued in accordance with this ~~regulation rule~~ when such those interests estates are separate from the fee interest, or are being leased and/or actively mined.

2.3 ~~These other~~ The natural resources interests set forth in subsections 2.1 and 2.2 of this Section may be owned without being mined. ~~These other~~ Specific title to

those natural resources interests may exist where the natural resource is not actually present (barren), or where the natural resource is unmineable, or mined out.

2.4 For valuation purposes, this regulation rule classifies other natural resource property ownership into the following categories:

2.4.1 Active

2.4.2 Reserves

2.4.3 Unmineable

2.4.4 Mined-Out

2.4.5 Barren

§ 110-1K-3. Definitions.

As used in ~~these regulations~~ this rule and unless the context clearly requires a different meaning otherwise, the following terms shall have the meaning ascribed in this section, herein; and shall apply both in the singular or and in the plural.

3.1 "Annual acres mined" means the average annual production, as defined in subsection 3.3 of this section ~~Section 3.3 of these regulations~~, divided by the product of the average thickness (Thk) in feet of the natural resource seam being mined, as detailed in annual mining permit reports, ~~times the tons per acre foot, as set out below,~~ times the recovery rate according to the actual recovery of the natural resource per acre being experienced at the mining operation multiplied by the tons per acre foot ( \_\_\_\_\_ tons/acre foot as set out in Appendix A, Formula 2 to this rule) multiplied by the clean resource recovery rate (RR) at the mining operation, or as calculated from tonnage reported to the West Virginia Office of Miner's Health, Safety and Training/Office of Mining and Reclamation if substantially different. Appendix A, Formula 1, is the method to be used for calculating annual acres mined.

For use in these regulations, the following in-place tons per acre-foot figures will be used:

Limestone = 3,600 tons per acre-foot

Sandstone = 3,600 tons per acre-foot

Clay and Shale = 3,050 tons per acre-foot

~~Sand and Gravel = 2,400 tons per acre foot~~

~~Salt = 2,950 tons per acre foot~~

~~Average Annual Production~~

~~Thickness x Tons per Acre-Foot = Annual Acres Mined x Recovery Rate~~

~~3.2 "Active mining property" means a mineable natural resource on a parcel or portion of a parcel involved in a mining operation, as defined in subsection 3.17 of this Section, permitted by the West Virginia Office of Miner's Health, Safety and Training/Office of Mining and Reclamation. Each and every mineable natural resource shall be considered a separate active mining property. For the purposes of determining active mining property, all contiguous parcels, regardless of ownership, that are under lease or involved in the permitted operation shall be treated as an active mining parcel. The active mining acreage of any natural resource or resources on a parcel shall be calculated by multiplying acres mined times the life of the mine. If this calculation, however, results in an acreage figure that is higher than the total mineable acreage of the natural resource on the parcel, the lower figure shall be used. This calculation shall be made of each "Other Natural Resource" activity being mined on the parcel.~~

~~For use in these regulations, the maximum active mining property for each natural resource will be as follows:~~

~~3.2.1. Surface limestone. The active mining property of a surface limestone mine shall be derived by multiplying five (5) years times acres mined.~~

~~3.2.2. Deep limestone. The active mining property of a deep limestone mine shall be derived by multiplying fifteen (15) years times acres mined.~~

~~3.2.3. Sandstone. The active mining property of a surface sandstone mine shall be derived by multiplying five (5) years times acres mined.~~

~~3.2.4. Surface clay and shale. The active mining property of a surface clay and shale mine shall be derived by multiplying five (5) years times acres mined.~~

~~3.2.5. Deep clay and shale. The active mining property of a deep clay and shale mine shall be derived by multiplying fifteen (15) years times acres mined.~~

~~3.2.6. Sand and gravel. The active mining property of a sand and gravel mine shall be derived by multiplying five (5) years times acres mined.~~

~~3.2.7. Salt. — The active mining property around each salt well shall be a maximum of thirty five (35) acres. After a well's first year of production, active mining property shall be derived by subtracting acres mined from the thirty five (35) acres.~~

3.3 "Average annual production" means the average arithmetic mean of the annual rate of natural resource production as determined by a weighted average of the three (3) years' production that occurred between January 1st and December 31st of the most current recent calendar years preceding the July 1st assessment date. If production during any of these three (3) calendar years involved a period of less than eleven (11) months, that production shall be annualized before the average annual production is calculated.

~~The weighted average shall be determined by multiplying the most recent year's production by four tenths (.4), each of the previous two (2) years' production multiplied by three tenths (.3), and the resulting three (3) figures added together to arrive at the average annual production. However, if there is no production during the most recent year then the property will not be valued as active mining property for that year.~~

~~Where there has been no production during the second (2nd) or third (3rd) most recent year, the production for the current year will be factored by five tenths (.5) and the production for the earlier year in which production existed will be factored by five tenths (.5) and the resulting two (2) figures will be added together to arrive at the average annual production.~~

~~If there was no production in both the second (2nd) and third (3rd) most recent years then the production for the most recent year will be factored by one (1.0) and the resulting figure will be the average annual production.~~

3.4 "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.

3.5 "Barren" means ~~and includes those properties where other natural resource rights are separately and/or individually owned, and the existence of any natural resource has not been established~~ fee or mineral properties where other natural resource rights are owned, but a specific natural resource may never have been deposited or may have been subsequently removed by erosion.

3.6 "Capitalization rate" means a rate used to convert an estimate of income into an estimate of market value. ~~For further explanation see Section 4.1.8 9 of these regulations.~~

3.7 "Clean Resource Recovery Rate" means the percentage of marketable resource that is recovered. The clean resource recovery rate must reflect the difference between calculated whole bed tonnage (tons-in-place) and mined tonnage as reported to the West Virginia Office of Miner's Health, Safety and Training/Office of Mining and Reclamation.

3.8 "Commissioner" or "Tax Commissioner" means the State Tax Commissioner of the State of West Virginia, or his or her delegate.

3.7 9 "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.

3.8 10 "Economic life method of recapture" means a method of developing a recapture rate by estimating the period of time an investment will shall produce a return and estimating an equal periodic rate of recapture of the investment over this return period.

3.11 "Life of mining operation" means the life of the mining operation (in years) shall be equal to the active mining property acreage divided by acres mined. The maximum mine life shall be five (5) years for surface mines involving limestone, sandstone, clay and shale, and sand and gravel, ten (10) years for wells used in the production of salt, and fifteen (15) years for deep mines involving limestone, and clay and shale. In calculating the years involved in the life of active mining property, all fractional figures will be rounded to the nearest whole number number of years required to exhaust the natural resource at the average annual production rate. Fractional years shall be rounded to the nearest whole number.

3.40 12 "Management rate" means a rate reflecting a return to an investor for the management of similar investment portfolios.

3.44 13 "Market comparison discount" means a discount rate derived by dividing income, net of the recapture and property taxes, by the arms-length selling price of the property.

3.42 14 "Market comparison method of recapture" means a recapture rate estimated by dividing income, net of return on investment and property taxes, by the arms-length selling price of the property.

3.43 15 "Mineable natural resource" means a natural resource which is so situated that it may be mined using generally accepted mining practices and suitable equipment and which is of such quality so as to be commercially saleable (as either a

~~mined natural resource or as a recoverable reserve). The condition of mineability presupposes that the resource is under lease and is being or is about to be mined.~~

3.44 16 "Mined-out" means a natural resource, or any portion thereof, determined to be depleted by prior mining operations, ~~and which is not mineable by modern technology.~~

3.45 17 "Mining operation" means an enterprise, permitted by the West Virginia Office of Miner's Health, Safety and Training/Office of Mining and Reclamation, which is engaged in actively obtaining or preparing to obtain a natural resource or its by-products from the earth's crust including by underground, surface and auger mines. Each mining operation may have more than one (1) area designated as "Active Mining Property," as defined in ~~Section 3.2 of these regulations~~ subsection 3.2 of this Section. ~~This designation of "Active Mining Property" areas shall be determined as follows:~~

~~3.15.1. If the mining operation is producing a natural resource from a Department of Commerce, Labor, and Environmental Resources permit, then that operation will be designated as "Active Mining Property". However, if the mining operation is producing from more than one (1) natural resource under a Department of Commerce, Labor and Environmental Resources permit, then each active natural resource will be designated as an "Active Mining Property".~~

~~3.15.2. If the mining operation is producing a natural resource at different locations, portals and/or faces under one (1) specific permit, then that operation will be designated as one (1) "Active Mining Property". However, if the production of the natural resource involves different mining techniques (e.g. surface, auger or deep mining method), or if mining sites are separate and generally independent, then such sites will be designated as separate "Active Mining Properties".~~

3.46 18 "Multiplier" means the "Present Worth of One (1) Per Period" for the "life of the mining operation", as defined in this Section 3, employing the capitalization rate established in Section 4.1.8 of ~~these regulations~~ this rule, as determined by a standard mid-year life Inwood table.

3.47 19 "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.

3.20 "Operator" means an individual, partnership, corporation or other enterprise that is engaged in actively obtaining or preparing to obtain a natural resource or its by-products from the earth's crust in an active mining property.

3.21 "Present value per acre" means resource bed value factor multiplied by the number of mineable acres.

3.18 22 "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.

3.49 23 "Recapture component" means a rate reflecting a provision for returning to an investor a sum of money equal to his or her investment.

~~3.20. "Recovery rate" means the percentage of the natural resource thickness that is economically recovered through the mining process.~~

3.24 24 "Reserves" means the natural resource acres or portions thereof of those acres, which are mineable and contain recoverable natural resources but are not active mining property; contain the mineable natural resources; are within a permitted mining property; and, are not within the active mining portion of the property.

3.22 25 "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.

3.23 26 "Royalty rate" means the rates determined annually by the Tax Commissioner and are which reflect the current market royalty rates for arms-length, willing buyer-willing seller transactions for each of the different types of natural resources and types of mining operations derived in Section 4.1.6 of these rules this rule. The royalty rates are deemed considered to be paid to each owner of a natural resource estate for all actively mined property resources.

3.24 27 "Safe rate" means a rate reflecting a return to an investor on an investment which has little, if any, likelihood of loss of either principal or anticipated return on investment.

3.25 28 "Summation discount component" means a discount rate expressed as the aggregate of a safe rate, risk rate, nonliquidity rate, and management rate, adjusted for inflation.

3.26 29 "Thickness" means the measurement of all the visible natural resource, including any thinner resource strands (splits) beds seen above or below the main block; (this is also known as the natural resource or seam height) bed that comprise part of what is generally understood to be a logical mining unit. The thickness used in calculating the annual acres mined shall set forth in Section 4.1 of this rule.

~~3.27 30~~ "Tons per acre foot" means the result of the calculation used in converting a natural resource's specific gravity into a quantity measurement weight, in tons, of a relatively clean resource one foot in thickness and covering one acre. Appendix A, Formula 2 contains the method for calculating "tons per acre foot." From this formula, the following in-place tons per acre-foot (resource density) figures shall be used:

Limestone = 3,600 tons per acre foot (2.65 lbs. resource/ 1 lb. water)  
Sandstone = 3,400 tons per acre foot (2.50 lbs. resource/ 1 lb. water)  
Clay and Shale = 3,250 tons per acre foot (2.39 lbs. resource/ 1 lb. water)  
Sand and Gravel = 2,400 tons per acre foot (1.77 lbs. resource/ 1 lb. water)  
Salt = 2,950 tons per acre foot (2.17 lbs. resource/ 1 lb. water)

~~3.28 31~~ "Unmineable natural resource" means a natural resource which is not "mineable natural resource" as defined above in this Section 3.

§ 110-1K-4. Valuation methods.

4.1 Method for determining value of active mining property.

4.1.1 General. -- The value of Active Mining Property shall be is the value per active acre times multiplied by the amount of active acres. In no case will shall the active mining property be valued at less than its value as reserve property.

~~4.1.2. Value per active acre. -- The value per active acre is determined through the following formula:~~

~~Thickness x Tons per acre foot x Recovery rate x Multiplier (divided by) Mine life (yrs.) = Value per active acre~~

~~4.1.3. Thickness (ft.). -- See definition in Section 3.26 of these regulations.~~

~~4.1.4. Tons per acre foot. -- See definition in Section 3.27 of these regulations, and actual tons per natural resource in Section 3.1 of these regulations.~~

~~4.1.5. Recovery rate. -- See definition in Section 3.20 of these regulations.~~

~~4.1.6. Royalty rate. -- For use in the formula prescribed by this regulation, the royalty rate(s) will be determined for each of the different types of natural resources and types of mining operations. These will include specific royalty rates for (1) limestone (dolomite) surface mine; (2) limestone (dolomite) deep mine; (3) sandstone~~

~~(industrial) surface mine; (4) sandstone (aggregate) surface mine; (5) clay and shale surface mine; (6) clay and shale deep mine; (7) sand and gravel surface mine; and (8) salt wells. These royalty rates shall be established annually by the Tax Commissioner after review of recorded, willing seller-willing buyer arms-length natural resource property leases that have occurred in the State of West Virginia during at least the five (5) years prior to appraisal date, and through inspection of other appropriate information. This review will place a greater emphasis on the information and leases transacted during the most recent years. For those natural resources that are not involved in any recorded lease agreements, the Tax Commissioner will derive a royalty rate through surveys conducted with private appraisal and/or engineering companies, data provided by the other pertinent State agencies and other appropriate information from the specific natural resource companies involved. The Tax Commissioner will maintain and publish this survey (report) of royalty rates (which will include the preliminary rates) on or before May 31 of each year; will accept written public comment on the survey until June 15 of each year; and will issue final royalty rates on or before July 1 of each year. This survey of royalty rates will be constructed to indicate the following: (1) county in which leased property is located; (2) deed book, page number; (3) lessor-lessee; (4) date recorded; (5) acreage involved; (6) type of mining operation; (7) consideration; and (8) a narrative on rates derived for those nonleased natural resources. From this survey, the Tax Commissioner will select the royalty rate(s) that best typify such transactions. In order to convert percentage royalty rates into specific value per ton rates, the Tax Commissioner will conduct a review of the specific natural resource selling prices in West Virginia by requesting such information from private purchasers, State Department of Highways, and West Virginia Geological and Economic Survey, as well as other informative sources available and select specific selling price rate(s) based on prices best typifying activity in each appraisal year. The selected selling prices per ton when multiplied by the percentage royalty rate will result in a price per ton royalty rate factor.~~

~~4.1.7. Amount of active acres.—The maximum amount of active acres are described in Section 3.2 of these regulations.~~

~~4.1.8. Capitalization rate.—The capitalization rate will be developed considering the techniques found in general practice in the appraisal profession when developing an income approach valuation estimate. Following is a listing of terms and definitions employed in developing various capitalization rate indicators.~~

~~4.1.8.1. Discussion.—The capitalization rate as defined in Section 3.6 of these regulations will be determined annually by the Tax Commissioner through the use of generally accepted methods for estimating such rates. The rate so developed will consider a level terminal income series which is indicative of active mining properties. The capitalization rate used to value active mining properties will be developed giving consideration to the following three (3) approaches:~~

~~4.1.8.1.a. Discount component.~~

~~4.1.8.1.a.1. Market Comparison. Sufficient sales data permitting, the market comparison technique will be employed as the primary indicator for an appropriate discount component. The market comparison discount component will be developed by dividing aggregate royalty rate income streams adjusted for recapture by verified recorded arms length sales transactions for active mining properties which have occurred in the State of West Virginia during the five (5) years prior to the annual appraisal date. The market comparison discount component selected will be based upon those rate indicators best typifying activity in this five (5) year research period. In selecting the discount component, greater emphasis will be given to information from arms length sales occurring during the most recent years of the study.~~

~~4.1.8.1.a.2. Summation Technique. In the absence of sufficient data to statistically support primary consideration of the market comparison technique, the summation techniques will be given primary consideration. The summation discount component will be developed reflecting the following four (4) major subcomponents:~~

~~4.1.8.1.a.2.a. Safe Rate~~

~~4.1.8.1.a.2.b. Risk Rate~~

~~4.1.8.1.a.2.c. Nonliquidity Rate~~

~~4.1.8.1.a.2.d. 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 three (3) years 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 properties. This survey will be conducted for a three (3) 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 three (3) year period. An interest differential will then be selected representing the "Risk Rate". The "Nonliquidity Rate" will be developed through an annual survey to determine a reasonable estimate of time that natural resource 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 of investment firms to identify charges for the management of investment portfolios.~~

~~4.1.8.1.a.3. Bands of investment. — Data permitting the bands of investment technique will be considered in conjunction with the two (2) previously mentioned discount estimate components.~~

~~4.1.8.1.b. Recapture component. — Selection of a multiplier will be accomplished through access of a standard mid year life Inwood table. The Inwood table has a factor for recapture built into the table coefficients. Inclusion of a recapture component in the capitalization rate is therefore not appropriate.~~

~~4.1.8.1.c. Property tax component. — The effective property tax rate will be estimated by multiplying the assessment ratio by the average statewide levy rate for Class 3 property. At the present time, research indicates that the natural resource property tax is paid by the property owner with no additional compensation from the producer. Thus, since property taxes are part of royalty rates, this component will be used in the capitalization rate. However, if this described general practice changes, (property taxes paid by producer) then the use of this component will be deleted.~~

~~4.1.8.2. The development of components referenced in Section 4.1.8.1 of these regulations will be conducted and tentative results published by the Tax Commissioner on or before May 31 of each year. Public comment on such surveys will be accepted until June 15 of each year, and final results will be issued on or before July 1 of each year.~~

4.1.2 Determination of Active Mining Property. -- The designation of "Active Mining Property" is determined as follows:

4.1.2.a An Operator may designate or assign a portion of a parcel to an Active Mining Property when only that portion is suitable for mining purposes. For determining the actual area of the Active Mining Property, the operator shall include all contiguous parcels or portions of parcels containing the mineable natural resource(s) which are under lease, regardless of ownership. Parcels that are not leased or owned and that fall within the mining portion of the Active Mining Property shall have the requisite mineable resource valued at the applicable reserve rate for the life of the mining operation.

4.1.2.b For purposes of determining the actual area of the active mining property, the operator shall treat all contiguous parcels or portions of parcels containing the mineable natural resource(s) that are under lease, regardless of ownership, as active mining property. If more than one (1) natural resource is being

mined under a permit, each natural resource represents a separate active mining property.

4.1.2.c If the permitted operation has not begun production by the July 1st assessment date, the operator shall report the mineable natural resource(s) on an active property return and value them as reserves for the applicable tax year. Once a parcel or a portion of a parcel has been assigned to or designated as an active mining property, the parcel, or portion of the parcel, shall continue to be listed on the active return, filed annually, until such time as the permit has been retired.

4.1.2.d Should the mining operation cease production after January 1st but prior to July 1st of the most recent calendar year preceding the July 1st assessment date, and there is mineable natural resource(s) remaining, the remainder shall be valued at the reserve rate for the current tax year.

4.1.2.e Any permitted mining operation producing only one (1) natural resource shall be designated as "Active Mining Property". If the mining operation is producing more than one (1) natural resource, each natural resource shall be designated as an "Active Mining Property".

4.1.2.f If the mining operation is producing a natural resource at different locations, portals and/or faces under one (1) specific permit, that operation shall be designated as one (1) "Active Mining Property". If the production of the natural resource involves different mining techniques (surface, auger or deep mining method), or if mining sites are separate and generally independent, then those sites shall be designated as separate "Active Mining Properties".

4.1.2.g For use in this rule, the maximum active mining portion for each natural resource is fifteen (15) years multiplied by the annual acres mined, except for salt. The active mining portion around each salt production well is a maximum of thirty-five (35) acres. After a well's first year of production, active mining property shall be derived by subtracting acres mined from the thirty-five (35) acres.

4.1.2.h If the available mineable acreage of the natural resource being mined is less than the maximums listed the foregoing subdivision 4.1.2.g, the total available acreage may be considered for designation as active mining property.

4.1.3 **Determination of Average Annual Production** – Average annual production, as defined in Section 3 of this rule, is determined as follows:

4.1.3.a An arithmetic mean shall be calculated on tonnage by the producer and verified by the Tax Commissioner through research of the West Virginia

Office of Miner's Health, Safety and Training and/or audit-derived information for the three (3) most recent calendar years preceding the July 1st assessment date.

4.1.3.b If there was no production in either the second (2nd) and/or third (3rd) most recent calendar years, an arithmetic mean of the available year(s) production shall be used.

4.1.4 Value per active acre -- Application of the valuation formula for active mining property shall be based on the actual quantity of resource produced and sold. Factors to be used for the specific active mining property are: resource thickness in feet (Thk); tons per acre foot (Appendix A, Formula 2); Clean Resource Recovery Rate (RR%); Royalty Rate (Roy%); net present value Multiplier (M); and, Mine Life in years (ML). Appendix A, Formula 3 to determine the value per active acre.

4.1.5 Thickness (ft). -- As defined in Section 3 of this rule, thickness is determined as follows:

4.1.5.a An arithmetic mean shall be taken of thickness as reported by producers and verified by the Commissioner through research of West Virginia Office of Miner's Health, Safety, and Training records and/or audit-derived information for the three (3) most recent calendar years prior to the July 1st assessment date.

4.1.5.b If there has been no production in either the second and/or third most recent calendar years, an arithmetic mean of the available years shall be used.

4.1.6 Royalty rate. -- For use in the formula prescribed by this rule, the royalty rates shall be determined for each natural resource and types of mining operations. These royalties shall include specific rates for:

4.1.6.a limestone/dolomite mines;

4.1.6.b sandstone (industrial) and/or aggregate mines;

4.1.6.c clay and/or shale surface mines;

4.1.6.d clay and/or shale underground mines;

4.1.6.e sand and gravel surface mines; and

4.1.6.f salt brine wells.

Royalty rates shall be established annually by the Tax Commissioner after review of both recorded and unrecorded, willing seller-willing buyer natural resource property leases that have occurred in the State of West Virginia during at least the five (5) calendar years prior to the appraisal date, and through inspection of other appropriate information. This review shall place a greater emphasis on information from leases transacted during the most recent years. For those natural resources involved in few or no recorded lease agreements, the Tax Commissioner shall derive a royalty rate through surveys conducted by his or her staff, data provided by the other pertinent State agencies, and other appropriate information as may be made available from the specific natural resource producers. The Tax Commissioner shall maintain this survey (report) of royalty rates and file it in the State Register on or before July 1st of each year; shall accept written public comment on the survey until August 1st of each year; and, shall file final royalty rates in the State Register on or before September 1st of each year. From this survey, the Tax Commissioner shall select the royalty rates that best typify the transactions. In order to convert percentage royalty rates into specific value per ton rates, the Tax Commissioner shall, if necessary, conduct a review of the specific natural resource selling prices in West Virginia by requesting the selling prices from private purchasers, the State Department of Highways, and the West Virginia Geological and Economic Survey, as well as other informative sources available, and select specific selling price rates based on prices best typifying activity in each appraisal year. The selected selling prices per ton when multiplied by the percentage royalty rate shall result in a royalty price per ton.

4.1.7 Capitalization rate. -- A single statewide capitalization rate for other mined natural resources shall be determined annually by the Tax Commissioner through the use of generally accepted methods of determining these rates. The rate shall be based on the assumption of a level, non-inflating income series. The capitalization rate used to value other mined natural resources shall be developed considering a discount rate determined by the summation technique.

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

4.1.7.1.a Safe Rate -- The safe rate shall reflect a rate of return that an investor could expect on an investment of minimal risk. It shall be developed through review of interest rates offered on thirteen-week United States Treasury Bills for a period of three (3) calendar years prior to the appraisal date.

4.1.7.1.b Nonliquidity Rate -- The nonliquidity rate shall be developed through an annual survey to determine a reasonable estimate of time that natural resource property, when offered for sale, remains on the market. The time determined shall 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 shall be used to represent the nonliquidity rate. For example, if it is determined that other natural resource property remains on the market for an average of nine months (39 weeks) before being sold, the nonliquidity rate shall be derived by taking the rate on one (1) year Treasury Bills minus the rate on thirteen-week Treasury Bills.

4.1.7.1.c Risk Rate -- The relative degree of risk of an investment in other natural resource property is difficult to determine from published interest rates. A survey of interest rates required on loans for acquisition and/or development of other natural resource properties shall be conducted annually and shall cover a three (3) calendar year period prior to the appraisal date. Results of the survey shall be compared to interest rates offered on thirteen-week United States Treasury Bills for the same three (3) calendar year period. The difference between the two, combined with bands of investment analysis, shall be used as a basis to estimate the risk rate.

4.1.7.1.d Management Rate -- The management rate represents the cost of managing the investment, not the cost of managing the other natural resource property. The management rate shall be developed through a survey of investment firms to identify annual charges for the management of investment portfolios.

4.1.7.1.e Inflation Rate (negative) -- Nominal interest rates, including the "safe rate" mentioned, are higher than real rates by an amount representing expectation of future inflation. However, net annual income from other natural resource property is to be estimated assuming level future royalties (no inflation). The capitalization rate must be a real rate, net of expectation of inflation. The inflation rate shall be estimated through analysis of the most recent three (3) calendar year's urban consumer price index as determined by the United States Department of Labor, Bureau of Labor Statistics.

4.1.7.2 In determining the discount component of the capitalization rate, the Tax Commissioner shall take the sum of the safe rate, nonliquidity rate, risk rate, and management rate, and shall deduct from this sum the inflation rate.

4.1.7.3 Property tax component -- This component shall be estimated by multiplying the assessment rate by the statewide average of tax rates for Class III property. At the present time, research indicates that royalty rates on other natural resources include a component for property tax, with no additional compensation from the producer. As a result, the property tax component shall be used in the capitalization rate. If this described general practice changes and property taxes are paid as additional compensation, the use of this component shall be deleted.

4.1.7.4 Results of Capitalization Rate Survey -- The survey for development of components referenced in Paragraph 4.1.9.1 of this rule shall be conducted annually and tentative results filed by the Tax Commissioner in the State Register on or before July 1st of each year. Public comment on the survey results shall be accepted until the subsequent August 1st, with final results filed in the State Register on or before September 1st of each year.

~~4.2. Valuation of reserves. -- Reserve values for limestone, sandstone, clay and shale, sand and gravel, and salt shall be determined annually by the Tax Commissioner. This determination will be conducted by the Tax Commissioner after review of recorded willing seller-willing buyer arms-length natural resource property sales that have occurred in the State of West Virginia during at least the five (5) years prior to the appraisal date, and through inspection of other appropriate information. This review will place a greater emphasis on the information and sales transacted during the most recent years. For those natural resource properties which are not involved in any recorded sale agreements, the Tax Commissioner may also derive the valuation through reviews conducted with private appraisal and/or engineering companies, data provided by other State agencies and other appropriate information as requested from the natural resource owners or producer. The Tax Commissioner will maintain and publish this survey (report) of natural resource property sales on or before May 31 of each year; will accept written public comment on the survey until June 15 of each year; and issue the final values per acre on or before July 1 of each year. This survey of reserve natural resource sales will be constructed to indicate the following: (1) county in which the property is located; (2) deed book, page number; (3) grantor-grantee; (4) date recorded; (5) acreage involved; (6) natural resource involved; (7) consideration; (8) consideration per natural resource acre sold and (9) a narrative on values derived for those natural resources not involved in sales. From this survey, the Tax Commissioner will select the values per acre for each natural resource that best typify such transactions.~~

4.2 Valuation of reserves. -- Reserve valuation rates for limestone, sandstone, clay and shale, sand and gravel, and salt shall be determined annually by the Tax Commissioner after review of recorded willing seller-willing buyer natural resource, production-specific, property sales that have occurred in the State of West Virginia during at least the five (5) calendar years prior to the July 1st appraisal date, through inspection of other appropriate information, and quantitative data that might reflect current market values. This review shall place a greater emphasis on the most current data. For those natural resource properties involved in few or no recorded sale agreements, the Tax Commissioner may also derive the valuation through reviews conducted by his or her staff, data provided by other State agencies, and other appropriate information as may be made available by the specific natural resource producers involved. The Tax Commissioner shall maintain this review of natural

resource property sales and file it in the State Register on or before July 1st of each year; shall accept written public comment on the survey until the subsequent August 1st; and shall file the final valuations for each natural resource in the State Register on or before September 1st of each year.

**4.3 Valuation of unmineable other natural resource properties.** -- Properties in this category shall be are valued at one dollar (\$1.00) per acre.

**4.4 Valuation of mined-out/~~barren~~ other natural resource properties.** -- Properties in this category shall be are valued at one dollar (\$1.00) per acre.

**4.5 Valuation of barren other natural resource properties.** -- Properties in this category are valued at one dollar (\$1.00) per acre.

**4.6 Total other natural resource valuation.** -- The total other natural resource valuation for any natural resource parcel will shall involve the value for all active acres, all reserve acres, all unmineable acres, and all mined out/~~barren~~ and all barren acreage.

~~4.6. Summary of valuation of methods. Valuation of other natural resources.~~

~~4.6.1. Properties that involve natural resources shall be valued according to the following table.~~

~~Active Mining Property~~

~~Value Per Active Acre X Active Acres = Active Natural Resource Real Property Value~~

~~Reserve Property~~

~~Per Acre Reserve Value X Reserve Acres = Reserve Real Property Value~~

~~Unmineable Property~~

~~\$1 Per Acre X Unmineable Acres = Unmineable Real Property Value~~

~~Mined Out/Barren Property~~

~~\$1 Per Acre X Mined Out/Barren Acres = Mined Out/Barren Real Property Value~~

~~4.6.2. The total value for the natural resource properties will be the sum of the value of the active mining property, reserves, and the mined out/unmineable/barren acres.~~

~~4.6.3. If other real property interests are owned in the natural resource acreage, then the value of those additional interests shall be added to the total value of the natural resource properties to arrive at the total real property value.~~

~~4.7 Leasehold interests. -- These regulations~~ This rule generally attributes the value of the natural resource to the owner of the natural resource property. In those circumstances, however, where the owner of the property is subject to a lease requiring the owner to permit mining at royalty rates substantially below current market values, the owner may petition ~~the assessor, and on appeal,~~ the Tax Commissioner, to attribute a portion of the value of the natural resource determined by this formula to the leaseholder.

~~4.8 Active Farm properties. -- The natural resource rights that are part of a "fee" estate where the use of the surface has qualified as an active farm for farm use appraisal, will shall be valued in the following manner: (For a definition of an active farm see § 110-1R-1 et seq.)~~

~~4.8.1. Where income or royalty is not derived from the natural resource rights (natural resource rights not leased or non-producing) the natural resource interest shall not be valued.~~

~~4.8.2. Where income or royalty is derived from the natural resource rights (natural resource rights leased or producing) the natural resource interest shall be valued as follows:~~

~~4.8.2.1. 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, natural resource interests shall not be valued under this situation.~~

~~4.8.2.2. 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 natural resource values to the surface farm use value as described in 110 C.S.R. 1A, Valuation of Farmland and Structures Situated Thereon For Ad Valorem Property Tax Purposes.~~

~~4.9 Property reports. -- Prior to~~ On or before September 1st of each year the producer ~~and the natural resource owner will be required to~~ shall file a report an Annual Appraisal Report for Production of Other Mined Minerals with the Tax Commissioner with acknowledgement to the natural resource owners and the county assessors of in the countys where the natural resource property mines is assessed located. These reports will be designed by the State Tax Commissioner so that producing properties

will be reported by the producer (with authorization from natural resource owner). On or before September 16th of each year the natural resource owner of any property that is part of a permitted mining operation shall file an Annual Appraisal Return for Reserve Mineral Properties with the Tax Commissioner. Owners of natural resource properties may file an Annual Appraisal Return for Reserve Mineral Properties, on or before September 16th, with the Tax Commissioner; otherwise, the properties shall be valued using the best available information.

**4.10 Confidentiality** – All information provided by or on behalf of a natural resources property owner or by or on behalf of an owner of an interest in natural resources property to any state or county representative for use in the valuation or assessment of natural resources property or for use in the development or maintenance of a legislatively funded mineral mapping or geologic information system is confidential. The information is exempt from disclosure under provisions of West Virginia Code § 29B-1-4, and shall be kept, held, and maintained confidential except to the extent the information is needed by the State Tax Commissioner to defend an appraisal challenged by the owner or lessee of the natural resources property subject to the appraisal: Provided, That this section may not be construed to prohibit publication or release of information generated as part of the minerals mapping or geologic information system, whether in the form of aggregated statistics, maps, articles, reports, professional talks, or otherwise presented in accordance with generally accepted practices and in a manner so as to preclude the identification or determination of information about particular property owners.

## APPENDIX A

### Formula 1

$$\text{Annual acres mined} = \frac{\text{Average Annual Production}}{(\text{Thk}) \times (\text{___ tons/ac. ft.}) \times (\text{RR})}$$

### Formula 2

$$\text{Tons/ac.ft.} = \frac{(62.4 \text{ lbs.water/ft}^3) \times (\text{___ lbs.resource/1 lb.water}) \times (43,560 \text{ ft}^2/\text{acre}) \times (1 \text{ ft thickness})}{2000 \text{ lbs./ton}}$$

### Formula 3

$$$/\text{ac} = \frac{(\text{Thk}) \times (\text{___ tons/ac. ft.}) \times (\text{RR}) \times (\text{Roy}) \times (\text{M})}{\text{ML}}$$



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CECIL H. UNDERWOOD  
GOVERNOR

STATE OF WEST VIRGINIA  
DEPARTMENT OF TAX AND REVENUE

TAX DIVISION

P. O. Box 2389

Charleston, West Virginia 25328-2389

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE  
ROBIN C. CAPEHART  
SECRETARY

CONSENT TO FILE RULE

January 23, 1998

To Whom It May Concern:

Title of Rule: Valuation of Natural Resources Property Other Than Coal,  
Oil or Natural Gas For Ad Valorem Property Tax Purposes

Title Number: 110

Series Number: 1K

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

Signed this 23rd day of January, 1998.

Robin C. Capehart  
Secretary, Tax and Revenue

LD:JM/lr



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WEST VIRGINIA LEGISLATURE  
Legislative Rule-Making Review Committee

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

State Capitol - Room MB-49  
Charleston, West Virginia 25305  
(304) 347-4840

Senator: Mike Ross, Co-Chairman  
Delegate: Mark Hunt, Co-Chairman  
Counsel: Debra A. Graham

Joseph A. Altizer, Associate Counsel  
Rita Pauley, Associate Counsel  
Audrey R. Ross, Admin. Assistant

January 13, 1998

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register  
TO: Jerry Knight  
Department of Tax and Revenue  
Property Tax Division  
1124 Smith Street-Room 211  
Charleston, WV 25301  
FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: *Valuation of Natural Resources Property Other Than Coal, Oil or Natural Gas for Ad Valorem Property Tax Purposes (110CSR1K)*

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

- 1. Authorize the agency to promulgate the Legislative Rule
  - (a) as originally filed
  - (b) as modified by the agency
- 2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
- 3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
- 5. Recommends that the rule be withdrawn; a statement of reasons for such recommendation is attached.

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Pursuant to Code 29A-3-11(c), this notice has been filed in the State Register and with the agency proposing the rule.