

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

Form #3

Do Not Mark In this Box

FILED
JUL 11 10 33 AM '00

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

AGENCY: State Tax Department TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code §§ 11-1C-5(b) and 11-6G-1 et seq.

AMENDMENT TO AN EXISTING RULE: YES NO

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

TITLE OF RULE BEING AMENDED: Valuation of Public Utility Property 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 HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Robin C. Capehart, Secretary of Tax & Revenue

110 C.S.R. 1M

**VALUATION OF PUBLIC UTILITY PROPERTY FOR AD
VALOREM PROPERTY TAX PURPOSES**

STATEMENT OF CIRCUMSTANCES

House Bill 2670, effective June 11, 1999, transferred responsibility for the assessment of Intrastate Motor Carriers from the Board of Public Works to the respective county assessor. The bill also clarified the process used by the Department of Motor Vehicles to impose ad valorem fees on interstate commercial motor carriers. The amendments to this rule implement those legislative actions.

110 C.S.R. 1M

**VALUATION OF PUBLIC UTILITY PROPERTY FOR AD VALOREM
PROPERTY TAX PURPOSES**

SUMMARY OF RULE

This rule clarifies and implements State law as it relates to the appraisal of property subject to ad valorem taxation as a public utility. The rule also provides information for distinguishing between operating and non-operating public utility property for ad valorem tax purposes.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Valuation of Public Utility Property for Ad Valorem Property Tax Purposes

Type of Rule: Legislative Interpretive Procedural

Agency: State Tax Department
Address: State Capital, W-300
Charleston, WV 25324

1. Effect of Proposed Rule

	ANNUAL		FISCAL YEAR		
	INCREASE	DECREASE	CURRENT	NEXT	THEREAFTER
<u>ESTIMATED TOTAL COST</u>	\$ 0	\$ 0	\$ 0	\$ 0	\$ 0
PERSONAL SERVICES	0	0	0	0	0
CURRENT EXPENSE	0	0	0	0	0
REPAIRS & ALTERNATIONS	0	0	0	0	0
EQUIPMENT	0	0	0	0	0
OTHER	0	0	0	0	0

2. Explanation of above estimates:

There should be no fiscal impact from this rule.

Rule Title: Valuation of Public Utility Property for Ad Valorem Property Tax Purposes

3. Objectives of these rules:

The rule clarifies and implements State law as it relates to the appraisal of property subject to ad valorem taxation as public utilities.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

No Impact

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

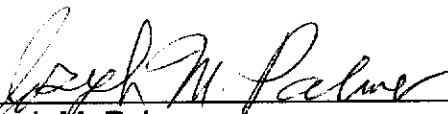
No Impact

C. Economic Impact on Citizens/Public at Large.

No Impact

Date: July 7, 2000

Signature of Agency Head or Authorized Representative



Joseph M. Palmer,
State Tax Commissioner

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 7, 2000

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: (Agency Name, Address & Phone No.) State Tax Department, Room W-301, Capital Bldg.,

Charleston, WV 25324

LEGISLATIVE RULE TITLE: Valuation of Public Utility Property for Ad Valorem Property
Tax Purposes

1. Authorizing statute(s) citation W. Va. Code §§ 11-1C-5(b) and 11-6G-1 et seq.

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:

May 26, 2000

b. What other notice, including advertising, did you give of the hearing?

Filed in State Register and on Department's web site

c. Date of Public Hearing(s) or Public Comment Period ended:

June 26, 2000

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 7, 2000

- f. **Name, title, address and phone/fax/e-mail numbers** of agency person(s) to receive all written correspondence regarding this rule: (Please type)

John Montgomery, Attorney Supervisor, Legal Division

State Tax Department, P.O. Box 1005, Charleston, WV 25324-1005

Phone: 558-5330, FAX 558-8728, e-mail JMontgomery@tax.state.wv.us

- g. **IF DIFFERENT FROM ITEM 'f'**, please give **Name, title, address and phone number(s)** of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

AGENCY APPROVED
TITLE 110
LEGISLATIVE RULE
STATE TAX COMMISSION

SERIES 1M

VALUATION OF PUBLIC UTILITY PROPERTY
FOR AD VALOREM PROPERTY TAX PURPOSES

FILED
JUL 11 10 33 AM '00
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

§ 110-1M-1. General.

1.1 **Scope.** -- This rule clarifies and implements State law as it relates to the appraisal, at market value, of property subject to taxation as public utilities; and general rules for distinguishing between operating and non-operating public utility property for ad valorem taxation purposes.

1.2 **Authority.** -- W. Va. Code § 11-1C-5(b).

1.3 **Filing Date.** --

1.4 **Effective Date.** --

§ 110-1M-2. Definition.

As used in this rule and unless the context clearly requires a different meaning, the following terms have the meaning ascribed in this section.

2.1 **"Bands of investment technique"** means a synthesis of capital components used in financing an investment.

2.2 **"Capitalization rate"** means a rate, used to convert an estimate of income to an estimate of market value.

2.3 **"Interstate C commercial motor vehicle"** means a qualified motor vehicle registered under a proportional registration agreement, or a qualified motor vehicle that, except for the fact that it is engaged only in intrastate commerce, would otherwise be subject to registration under proportional registration agreements. "Commercial motor vehicle" status may, at the option of the party registering the vehicle, be conferred upon a non-qualified motor vehicle such as a vehicle, or a combination thereof, that have a gross vehicle weight of 26,000 pounds or less, that have only two axles, or are used in the transportation of charter parties.

2.4 **"Cost approach"** means the appraisal process in which cost of the property being valued is considered in determining an estimate of fair market value. As a general

rule, original cost shall be used to value public utility operating property; however, when such original cost is not available, replacement cost or reproduction cost may be considered.

2.5 **"Economic obsolescence"** means a loss in value of a property arising from factors such as changes in use, legislation that restricts or impairs property rights, or changes in supply and demand relationships.

2.6 **"Fair market value"** means the highest price in terms of money that a property will bring in a competitive and open market, assuming that the buyer and seller are acting prudently and knowledgeably, allowing sufficient time for the sale and assuming that the price is not affected by undue stimulations.

2.7 **"Final assessed values"** means values established by the Board of Public Works required by W. Va. Code § 11-6-11.

2.8 **"Functional obsolescence"** means a loss in value of a property due to changes in style, taste, or technology.

2.9 **"Gross capital cost"** means the actual cost of the new or used vehicle at the time of purchase, as illustrated on the bill of sale, purchase contract, or similar document showing the purchase price of the vehicle. The cost at the time of purchase means 100% of the cost as shown on the books and records of the purchaser and includes freight, installation charges, trade-ins, federal tax allowances and any applicable credits utilized by the purchaser at the time of purchase.

2.10 **"Income approach"** means the appraisal process of discounting an estimate of future benefits into an expression of present worth.

2.11 **"Market data approach"** means the appraisal process of examining sales data and translating the data into an estimate of present worth.

2.12 **"Operating property"** means utility operating property used for purposes immediately connected with providing the respective utility service. The Tax Commissioner construes "purposes immediately connected with providing utility service" to be synonymous with properties considered by regulatory bodies in constructing the utility rate base for rate making purposes. The Tax Commissioner shall therefore give primary consideration to whether property is included in utility operating property classification as reflected in the applicable uniform system of accounts when deciding operating non-operating property issues.

2.13 **"Original cost"** means the initial cost paid for constructing or acquiring property.

2.14 **"Physical deterioration"** means a loss in value due to wear and tear in service.

2.15 **"Proportional registration agreement"** means an agreement entered into by the West Virginia Commissioner of Motor Vehicles under the authority of West Virginia Code § 17A-2-10a.

2.16 **"Public service corporation"** means business entities contemplated by the provisions of W. Va. Code § 11-6-1 et seq.

2.17 **"Qualified motor vehicle"** means a motor vehicle used, designed or maintained for the transportation of persons and property and:

2.17.1 Which is a self-propelled unit having a gross vehicle weight in excess of 26,000 pounds;

2.17.2 Is a self-propelled unit having three or more axles, regardless of weight;

2.17.3 Is used in combination with another vehicle, when the combined gross vehicle weight exceeds 26,000 pounds; or

2.17.4 The combined gross vehicle weight or combined registered gross vehicle weight of the two or more vehicles exceeds 26,000 pounds.

2.18 **"Rate base"** means that group of accounts or derivatives of those accounts, from the Uniform System of Accounts, on which a public utility is allowed a return on investment.

2.19 **"Regulation"** means the oversight of public service corporations by applicable federal and state regulatory bodies.

2.20 **"Replacement cost"** means the cost, including material, labor, and overhead, that would be incurred in constructing an improvement having the same utility to its owner as the improvement in question, without necessarily reproducing exactly any particular characteristic of the property.

2.21 **"Reproduction cost"** means the cost, including material, labor, and overhead, that would be incurred in constructing an improvement having exactly the same characteristics as the improvement in question.

2.22 **"Return on investment"** means a margin of profit generally expressed as a percentage of investment capital.

2.23 **"Stock and debt technique"** means a process of reviewing market trading prices of securities in order to arrive at an estimate of value.

2.24 **"Tentative assessments"** means property valuation estimates furnished by the Tax Commissioner to the Board of Public Works in accordance with W. Va. Code § 11-6-9.

2.25 **"Uniform system of accounts"** means the most current system of accounting developed and required by state and federal regulatory bodies.

2.26 **"Unit rule"** means an appraisal of an integrated property as a whole without any reference to the values of its component parts.

§ 110-1M-3. Situs.

3.1 Generally, when the cost approach is used, operating properties physically located in West Virginia shall be considered for tax purposes; however,

3.1.1 When the income approach is used, the unit of value shall be allocated to the state of West Virginia using operating plant data after which;

3.1.2 Apportionment of physical plant tax revenues, considering the location in the various taxing districts, shall be made by the West Virginia State Auditor's Office.

§ 110-1M-4. Valuation of Operating Public Utility Property (excluding interstate commercial motor vehicle property).

4.1 **Unit method.** -- The Tax Commissioner provides tentative assessments based on fair market value of operating property of public service corporations to be used as a guide by the Board of Public Works in establishing final assessed values for property tax purposes. In this regard the Tax Commissioner shall use the "Unit Rule" where applicable in furnishing tentative valuation estimates for the Board's consideration.

4.2 **Generally accepted appraisal methods.** -- In determining tentative assessments the Tax Commissioner shall consider, and use where applicable, three (3) generally accepted approaches to value: (A) cost, (B) income, and (C) market data. Application of these approaches shall recognize the impact of regulation on the value of utility operating property where applicable.

4.2.1 Cost approach. -- Recognizing that public service corporations are predominantly cost regulated, when the cost approach is used in the valuation process, original cost less applicable depreciation shall be employed. In applying the cost approach, the Tax Commissioner shall consider three (3) types of depreciation (a) physical deterioration, (b) functional obsolescence, and (c) economic obsolescence.

4.2.2 Income approach. -- In developing income approach valuations, the Tax Commissioner shall estimate capitalization rates considering the interrelationships of the income to be capitalized and the capitalization rate. In this regard, net operating income after taxes, but before interest on long-term debt shall be given primary consideration as the point on the income stream to be capitalized. The bands of investment technique shall be employed in estimating appropriate capitalization rates.

4.2.3 Market data approach. -- Recognizing that a sufficient number of sales of public service corporations do not occur to enable application of the market data technique, the Tax Commissioner shall consider the substitute stock and debt technique. The stock and debt technique shall be used in instances where a utility class possesses actively traded stocks and bonds that enable reasonable valuation estimates to be made.

4.2.4 Correlations. -- Once generated, the various estimates of value shall be correlated into a final value estimate. The income approach value shall generally be given primary consideration in the correlation process.

4.3 Classification of public utility and certain common carrier operating properties.

4.3.1 Electric utilities. -- Operating property for electric utilities shall primarily include properties that are considered by the Federal Energy Regulatory Commission (FERC) as part of the rate base for rate making purposes. In determining which properties are properly included as operating public utility property, the most recent FERC Uniform System of Accounts prescribed for Electric Utilities shall be used.

4.3.2 Gas utilities. -- Operating property for natural gas utilities shall primarily include properties that are considered by the Federal Energy Regulatory Commission (FERC) as part of the rate base for rate making purposes. In determining which properties are properly included as operating public utility property, the most recent FERC Uniform System of Accounts prescribed for Natural Gas Utilities shall be used.

4.3.3 Gas pipeline utilities. -- Operating property for natural gas utilities shall primarily include properties that are considered by the Federal Energy Regulatory Commission (FERC) as part of the rate base for rate making purposes. In determining

which properties are properly included as operating public utility property, the most recent FERC Uniform System of Accounts prescribed for Gas Pipeline Utilities shall be used.

4.3.4 Telephone companies. -- Operating property for telephone carriers shall primarily include properties that are considered by the Federal Communications Commission (FCC) as part of the rate base for rate making purposes. In determining which properties are properly included as operating public utility property, the most recent FCC Uniform System of Accounts prescribed for Telephone Utilities shall be used.

4.3.5 Telegraph carriers. -- Operating property for telegraph carriers shall primarily include properties that are considered by the Federal Communications Commission (FCC) as part of the rate base for rate making purposes. In determining which properties are properly included as operating public utility property, the most recent FCC Uniform System of Accounts prescribed for Wire-Telegraph and Ocean-Cable Carriers shall be used.

4.3.6 Airline companies. -- Operating property for air carriers shall primarily include properties that are considered as operating property by the Department of Transportation. In determining which properties are properly included as operating property, the most recent Uniform System of Accounts and Reports for Certified Air Carriers shall be used.

4.3.7 Interstate railroads. -- Operating property for interstate railroads shall primarily include properties that are considered as operating property by the Surface Transportation Board. In determining which properties are properly included as operating property, the most recent Uniform System of Accounts for Railroad Companies shall be used.

4.3.8 Intrastate railroads. -- Operating property for intrastate railroads shall primarily include properties that are considered by the West Virginia Public Service Commission as operating property. In determining which properties are properly included as operating property, the most recent Uniform System of Accounts for Railroad Companies as prescribed by the Surface Transportation Board shall be used.

4.3.9 Water utilities. -- Operating property for water utilities shall primarily include properties that are considered by the Public Service Commission as part of the rate base for rate making purposes. In determining which properties are properly included as operating public utility property, water utilities shall use the most recent Uniform System of Accounts of the National Association of Regulatory Utility Commissioners for Class A and B, and Class C and D water utilities.

4.3.10 **Sewer utilities.** -- Operating property for sewer utilities shall primarily include properties that are considered by the Public Service Commission as part of the rate base for rate making purposes. In determining which properties are properly included as operating public utility property, sewer utilities shall use the most recent Uniform System of Accounts of the National Association of Regulatory Utility Commissioners for Class A and B, and Class C and D sewer utilities.

4.3.11 **Carline companies.** -- Operating property for carline companies shall include consideration of Rolling Stock used in transportation of freight or passengers.

4.3.12 **Underground gas storage companies.** -- For public service corporations with underground gas storage and no other West Virginia property, operating property shall consist of only the gas stored underground.

4.3.4213 **Reorganization of regulatory bodies.** -- In the event that there should be a reorganization of federal or state regulatory bodies, and any of the public service corporations described herein would be required to report to an agency other than that listed in the applicable subdivision or in the event that there should be any other utilities considered taxable by the Board of Public Works, operating property for the public service corporations shall include properties that would be considered as operating by the appropriate state or federal regulatory body in the prescribed Uniform System of Accounts.

4.3.4314 **Exceptions.** -- Circumstances may arise where properties may be considered operating by the appropriate regulatory body but a portion of the property may be devoted to non-utility use. The Tax Commissioner may in these instances where deemed appropriate classify a portion of the property as non-operating and require that the non-operating portion so determined be assessed by the county assessor. In these instances adjustment to the public utility appraisal will be made to remove from the West Virginia unit values a proportionate value for such non-operating property.

§ 110-1M-5. Valuation of Interstate Commercial Motor Vehicles.

5.1 Classification of interstate motor carrier operating property.

~~5.1.1 **West Virginia based motor carrier** -- Operating property shall include every trailer, semi-trailer or power unit as a commercial motor vehicle used exclusively in this State or a trailer or semi-trailer of a West Virginia based interstate commercial motor vehicle business.~~

5.1.2 ~~**Interstate motor carrier**~~ -- Operating property shall include each power unit used as an interstate commercial motor vehicle registered under a proportional registration agreement.

5.2 **Appraisal method.** – A cost approach shall be used to determine the appraised value of a an interstate commercial motor vehicle. The gross capital cost of the interstate commercial motor vehicle shall be multiplied by a percentage factor representing the remainder of the vehicle's value after depreciation. ~~Separate depreciation schedules shall be developed annually for power units and trailers.~~

~~5.2.1 West Virginia based carriers:~~

~~5.2.1.1 West Virginia based intrastate motor carriers~~ – The Tax Commissioner shall annually provide tentative assessments of the power units, trailers and semi trailers owned by West Virginia based intrastate motor carriers to be used as a guide by the Board of Public Works in establishing final assessed values for property tax purposes. On or before September fifteenth, the Tax Commissioner shall issue tentative assessments to each carrier for its operating property.

~~5.2.1.2 West Virginia based interstate motor carriers~~ – The Tax Commissioner shall annually provide tentative assessments of the trailers and semi-trailers owned by West Virginia based interstate motor carriers to be used as a guide by the Board of Public Works in establishing final assessed values for property tax purposes. On or before September fifteenth, the Tax Commissioner shall issue tentative assessments to each carrier for its operating property.

5.2.21 ~~Interstate motor carriers:~~ The Tax Commissioner shall annually provide the depreciation schedule for power units to the West Virginia Commissioner of Motor Vehicles for use in assessing power units subject to proportional registration agreements. The property assessment and tax collection upon interstate power units will occur at the time of registration through the International Registration Plan.

5.3 **Interstate Motor Carrier Apportionment Factor** – For each interstate truck, road tractor and power unit registered under a proportional registration agreement, the appraised value, as determined under Subsection 5.1 of this rule, shall be multiplied by an apportionment factor the numerator of which represents the total fleet miles driven in the most recent taxable year in West Virginia and the denominator of which represents the total fleet miles driven in the most recent taxable year everywhere; the mileage amounts shall be the mileage amounts as reported to the West Virginia Division of Motor Vehicles.

§ 110-1M-6. Taxpayer Returns For All Public Utility Property Except Commercial Motor Vehicles.

6.1 The Tax Commissioner shall print taxpayer return forms. The forms shall be distributed to taxpayers for completion and return.

State Tax Commission
Title 110
Series 1M

6.2 To assure equality and uniformity in administration, no assessor or taxpayer shall substitute or supplement any other form for the Tax Commissioner's prescribed returns, without the prior approval of the Tax Commissioner. All approvals granted by the Tax Commissioner prior to the effective date of this rule are withdrawn.

6.3 All taxpayers shall prepare one (1) copy of the appropriate property tax return and file it with the Tax Commissioner.

6.4 Public utility ~~and common carrier~~ property tax returns shall be filed no later than May 1st of each year.

6.5 The Tax Commissioner, for good cause shown, may grant an extension of filing deadlines.