

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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OFFICE OF THE SECRETARY OF STATE
SECRET

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

AGENCY: State Tax Department TITLE NUMBER: 110

AMENDMENT TO AN EXISTING RULE: YES NO (Repeal & Replacement)

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 RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) HB 2570

SECTION 64-7-2(i), PASSED ON March 10, 1999

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON

THE FOLLOWING DATE: May 1, 1999


Robin C. Capehart, Cabinet Secretary

\$3.80

TITLE 110
LEGISLATIVE RULE
STATE TAX COMMISSION

RECEIVED
MAR 9 9 33 AM '99

SERIES 1M
VALUATION OF PUBLIC UTILITY PROPERTY
FOR AD VALOREM PROPERTY TAX PURPOSES

OFFICE OF THE COMPTROLLER
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) and 11-6G-1.

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 **"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 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 **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.

4.3.13 **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 Commercial Motor Vehicles.

5.1 Classification of 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 a 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 commercial motor vehicle. The gross capital cost of the 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.

5.2.2 **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.

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.

State Tax Commission
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Series 1M

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.

110-1m

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1 Bill-Tax, U

H. B. 2580

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(By Delegates Hunt, Linch, Compton, Faircloth,
Jenkins and Riggs)

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[Introduced February 1, 1999; referred to the
Committee on Finance then the Judiciary.]

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10 A BILL to amend and reenact section two, article seven,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the state tax commissioner to
14 promulgate a legislative rule relating to the
15 valuation of public utility property for ad valorem
16 property tax purposes.

17 **Be it enacted by the Legislature of West Virginia:**

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

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

2580

1 §64-7-2. Department of tax and revenue; tax division; and
2 state tax commissioner.

3 (a) The legislative rule filed in the state register
4 on the twenty-third day of July, one thousand nine hundred
5 ninety-six, authorized under the authority of section five,
6 article thirteen-j, chapter eleven of this code, modified
7 by the tax division to meet the objections of the
8 legislative rule-making review committee and refiled in the
9 state register on the thirty-first day of October, one
10 thousand nine hundred ninety-six, relating to the tax
11 division (tax credit for qualified agricultural equipment,
12 110 CSR 13J), is authorized.

13 (b) The legislative rule filed in the state register
14 on the sixteenth day of August, one thousand nine hundred
15 ninety-six, authorized under the authority of section
16 fifty-one, article twenty-one, chapter eleven of this code,
17 modified by the tax division to meet the objections of the
18 legislative rule-making review committee and refiled in
19 the state register on the thirty-first day of October, one
20 thousand nine hundred ninety-six, relating to the tax
21 division (personal income tax low income exclusions, 110
22 CSR 21.1), is authorized.

23 (c) The legislative rule filed in the state register

1 on the sixteenth day of August, one thousand nine hundred
2 ninety-six, authorized under the authority of section
3 twenty-one, article twenty-one, chapter forty-seven of this
4 code, modified by the tax division to meet the objections
5 of the legislative rule-making review committee and
6 refiled in the state register on the twenty-seventh day
7 of February, one thousand nine hundred ninety-seven,
8 relating to the tax division (charitable raffles, 110 CSR
9 37), is authorized.

10 (d) The legislative rule filed in the state register
11 on the twenty-ninth day of July, one thousand nine hundred
12 ninety-eight, authorized under the authority of section
13 seven-b, article six, section one, article six-g, and
14 section five, article one-c, chapter eleven, of this code,
15 modified by the state tax commissioner to meet the
16 objections of the legislative rule-making review committee
17 and refiled in the state register on the fifteenth day of
18 January, one thousand nine hundred ninety-nine, relating to
19 the state tax commissioner (valuation of public utility
20 property for ad valorem property tax purposes, 110 CSR 1M),
21 is authorized with the amendments set forth below:

22 On page two, by striking-out all of subsection 2.5;

23 On page two, by striking-out all of subsection 2.7 and

1 inserting in lieu thereof a new subsection 2.7 to read as
2 follows:

3 "§2.7 "Fair market value" means the highest price in
4 terms of money that a property will bring in a competitive
5 and open market, assuming that the buyer and seller are
6 acting prudently and knowledgeably, allowing sufficient
7 time for the sale and assuming that the price is not
8 affected by undue stimulations.";

9 On page four, subsection 3.1, after the word
10 "generally," by inserting the words "when the cost approach
11 is used,";

12 On page four, subsection 3.1, after the word
13 "purposes," by striking-out the period and inserting in
14 lieu thereof a colon and the word "however,";

15 On page four, by striking-out all of subdivision
16 3.1.1, and inserting in lieu thereof new subdivision 3.1.1
17 to read as follows:

18 " 3.1.1 When the income approach is used, the unit of
19 value shall be allocated to the state of West Virginia
20 using operating plant data after which;"

21 On page five, subdivision 3.1.2, by striking-out the
22 word "property" and inserting in lieu thereof the words
23 "physical plant";

1 On page five, by striking-out all of subdivision 4.2.1
2 and inserting in lieu thereof a new subdivision 4.2.1 to
3 read as follows:

4 "4.2.1 Cost approach. -- Recognizing that public
5 service corporations are predominantly cost regulated, when
6 the cost approach is used in the valuation process,
7 original cost less applicable depreciation shall be
8 employed. In applying the cost approach, the Tax
9 Commissioner shall consider three (3) types of
10 depreciation; (a) physical deterioration, (b) functional
11 obsolescence, and (c) economic obsolescence.";

12 On page five, subdivision 4.2.2 after the word
13 "interest" by striking-out the word "expense" and inserting
14 in lieu thereof "on long-term debt";

15 On page six, by striking-out all of subdivision 4.2.4;

16 On page six, subdivision 4.2.5 after the word
17 "process" by changing the colon to a period and by
18 striking-out the remainder of the subdivision;

19 On page eight, by striking-out all of subdivision
20 4.3.13;

21 And,

22 On page ten, by adding the new subsection 6.5 to read
23 as follows:

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

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5 NOTE: The purpose of this bill is to authorize the
6 State Tax Commissioner to promulgate a legislative rule
7 relating to the Valuation of Public Utility Property for Ad
8 Valorem Property Tax Purposes.

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