

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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FILED IN THE OFFICE OF
THE SECRETARY OF STATE
THIS DATE July 26, 1991
~~ADMINISTRATIVE LAW DIVISION~~

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Tax TITLE NUMBER: 110-1M

CITE AUTHORITY: 11-1C-5(b)

RULE TYPE: PROCEDURAL _____ INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE X
CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

11-1C-5(b)

AMENDMENT TO AN EXISTING RULE: YES _____, NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: 1-M

TITLE OF RULE BEING ADOPTED: Valuation of Public utility
Property for Ad Valorem Property Tax Purposes

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS July 1, 1991

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

FILED
1991 JUL 26 PM 3 37
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

VALUATION OF PUBLIC UTILITY PROPERTY
FOR AD VALOREM PROPERTY TAX PURPOSES

§ 110-1M-1. General.

1.1 **Scope.** - These regulations clarify and implement 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. Because these regulations provide context modifications of relevant parts of 110 C.S.R. 1 and such regulations with context modifications were adopted by the Tax Commissioner, W. Va. Code § 11-1C-5(b) eliminates the requirement that this filing be subject to the proceeding requirements of W. Va. Code § 29A-3-1 et seq.

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 these regulations and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, and shall apply in the singular or in the plural.

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

2.4 "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.

2.5 "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.

2.6 "Final assessed values" means values established by the Board of Public Works required by West Virginia Code § 11-6-11.

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

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

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

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

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

2.12 "Public service corporation" means business entities contemplated by provisions of West Virginia Code § 11-6-1 et seq.

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

2.14 "Regulation" means the process wherein fees charged for public utility services are reviewed by applicable federal and state regulatory bodies.

2.15 "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.

2.16 "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.

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

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

2.19 "Tentative assessments" means property valuation estimates furnished by the Tax Commissioner to the Board of Public Works in accordance with West Virginia Code § 11-6-9.

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

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

2.22 "Operating property" means utility operating property is 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 will 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.

§ 110-1M-3. Situs.

3.1 Generally, when the cost approach is used, operating properties physically located in West Virginia will 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, will be made by the West Virginia State Auditor's Office.

§ 110-1M-4. Valuation of operating public utility 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 will 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 will consider, and use where applicable, three (3) generally accepted approaches to value: (A) cost, (B) income, and (C) market data. Application of these approaches will 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 will be employed. In applying the cost approach, the Tax Commissioner will 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 will 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, will be given primary consideration as the point on the income

stream to be capitalized. The bands of investment technique will 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 will consider the substitute stock and debt technique. The stock and debt technique will 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 will be correlated into a final value estimate. The income approach value will generally be given primary consideration in the correlation process.

4.3 Classification of public utility and common carrier operating properties.

4.3.1 Electric utilities. - Operating property for electric utilities shall primarily include such properties as 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 such properties as 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 such properties as 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 such properties as 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 such properties as 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 such properties as are considered as operating property by the Civil Aeronautics Board (CAB). In determining which properties are properly included as operating property, the most recent CAB Uniform System of Accounts and Reports for Certified Air Carriers shall be used.

4.3.7 Interstate motor carriers. - Operating property for interstate motor carriers shall primarily include such properties as are considered as operating property by the Interstate Commerce Commission (ICC). In determining which properties are properly included as operating property, the most recent ICC Uniform System of Accounts for Common and Contract Motor Carriers of Passengers, and the most recent ICC Uniform System of Accounts for Class I and Class II Motor Carriers of Property shall be used.

4.3.8 Interstate railroads. - Operating property for interstate railroads shall primarily include such properties as are considered as operating property by the Interstate Commerce Commission (ICC). In determining which properties are properly included as operating property, the most recent ICC Uniform System of Accounts for Railroad Companies shall be used.

4.3.9 Intrastate railroads. - Operating property for intrastate railroads shall primarily include such properties as 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 Interstate Commerce Commission shall be used.

4.3.10 Intrastate motor carriers. - Operating property for motor carriers shall primarily include such properties as are considered as operating property by the West Virginia Public Service Commission. In determining which properties are properly included as operating property, motor carriers shall use the most recent Uniform System of Accounts for Common and Contract Motor Carriers adopted by the PSC.

4.3.11 Water utilities. - Operating property for water utilities shall primarily include such properties as 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.

4.3.12 Sewer utilities. - Operating property for sewer utilities shall primarily include such properties as 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.

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

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

4.3.15 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. Taxpayer returns.

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

5.2 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 such approvals granted by the Tax Commissioner prior to the effective date of this rule is hereby withdrawn.

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

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

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



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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building I, Suite 157-K
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TO: John Montgomery

AGENCY: Tax Department

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: October 7, 1992

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

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

SERIES: 1M TITLE: 110 Tax Department

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: *John Montgomery*

TITLE OF PERSON SIGNING: *Staff Attorney*

DATE: *10/28/92*

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

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

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