WEST VIRGINIA

SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

Do Not Mark In this Box

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 - 1P

CITE AUTHORITY: 11 - 1C - 1

RULE TYPE: PROCEDURAL ______ INTERPRETIVE ______

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

11 - 1C - 1

AMENDMENT TO AN EXISTING RULE: YES____, NO____

IF YES, SERIES NUMBER OF RULE BEING AMENDED: ______

TITLE OF RULE BEING AMENDED: ______

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

TITLE OF RULE BEING ADOPTED: Valuation of Commercial & Industrail Real & Personal 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

____

FILED
1991 JUL 26 PM 3:38
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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

VALUATION OF COMMERCIAL AND INDUSTRIAL REAL AND PERSONAL PROPERTY FOR AD VALOREM PROPERTY TAX PURPOSES

---

§ 110-1P-1. General.

1.1 **Scope.** - These regulations clarify and implement State law as it relates to the appraisal at market value of commercial and industrial real property. Because these regulations provide context modifications of relevant parts of 110 C.S.R. 1 and such regulations with context modifiations were adopted by the Tax Commissioner through inclusion in the valuation plan required by W. Va. Code § 11-1C-10(e), W. Va. Code § 11-1C-5(b) eliminated 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-1 **et seq.**

1.3 **Filing date.** -

1.4 **Effective date.** - July 1, 1991.

§ 110-1P-2. Appraisal Of Valuation Of Commercial And Industrial Real Property.

2.1 **Introduction.** - This regulation describes the method for determining the appraised value (market value) of commercial and industrial real property other than natural resource real property, land utilized for farming purposes and operating public utility property.

2.1.1 The appraised value (market value) of commercial and industrial real property is the price at or for which the property would sell if it was sold to a willing buyer by a willing seller in an arms-length transaction without either the buyer or the seller being under any compulsion to buy or sell. In determining appraised value, primary consideration shall be given to the trends of price paid for like or similar property in the area or locality wherein such property is situated. Additionally, for purposes of appraisal of any tract or parcel of real property used for commercial or industrial purposes, including chattels real, the appraisal shall consider the following factors:

2.1.1.1 The location of such property;

2.1.1.2 Its site characteristics;

2.1.1.3 The ease of alienation thereof, considering the state of its title, the number of owners thereof, and the extent to which the same may be the subject of either dominant or servient easements;

2.1.1.4 The quantity of size of the property and the impact which its sale may have upon surrounding properties;

2.1.1.5 If purchased within the previous eight years, the purchase price thereof and the date of each such purchase;

2.1.1.6 Recent sale of, or other transactions involving, comparable property;

2.1.1.7 The value of such property to its owner;

2.1.1.8 The condition of such property;

2.1.1.9 The income, if any, which the property actually produces and has produced within the next preceding three (3) years; and

2.1.1.10 Any commonly accepted method of ascertaining the market value of any such property, including techniques and method peculiar to any particular species of property if such technique or method is used uniformly and applied to all property of like species.

2.1.2 There are two (2) types of improvements which are considered in the appraisal process; these are improvements to the land and improvements on the land.

2.1.2.1 Improvements to the land are land improvements, the value of which are included in the value of land. Some examples of these improvements include privately owned drainage systems, driveways, walks, etc.

2.1.2.2 Improvements on the land are buildings and structures. They are valued separate and apart from the land.

2.1.3 In addition to improvements, other important considerations affecting the value of land, excluding farm land, are:

2.1.3.1 Location,

2.1.3.2 Size,

2.1.3.3 Shape,

2.1.3.4 Topography,

2.1.3.5 Accessibility,

2.1.3.6 Present use,

2.1.3.7 Highest and best use,

2.1.3.8 Easements,

2.1.3.9 Zoning,

2.1.3.10 Availability of utility,

2.1.3.11 Income imputed to land and

2.1.3.12 Supply and demand for land of a particular type.

2.1.4 Each of these factors should be considered in the appraisal of a specific parcel. Some, however, may be given more weight than others.

2.2 Generally accepted appraisal methods used to establish the value of industrial and commercial real properties.

2.2.1 In determining an estimate of fair market value, the Tax Commissioner will consider and use where applicable, three (3) generally accepted approaches to value: (A) cost, (B) income, and (C) market data.

2.2.1.1 **Cost approach.** - To determine fair market value under this approach, replacement cost of the improvements is reduced by the amount of accrued depreciation and added to an estimated land value. In applying the cost approach, the Tax Commissioner will consider three (3) types of depreciation: physical deterioration, functional obsolescence, and economic obsolescence.

2.2.1.2 **Income approach.** - A property's present worth is directly related to its ability to produce an income over the life of the property. The selection of an overall capitalization rate will be derived from current available market data by dividing annual net income by the current selling price of comparable properties. The present fair market value of the property shall then be determined by dividing the annual economic rent by the capitalization rate.

2.2.1.3 **Market data approach.** - The market data approach will be applied by considering the selling prices of comparable properties.

2.2.2 **Correlation.** - Once generated, the various estimates of value may be considered in determining a final value estimate. However, the income approach is ordinarily inappropriate for properties such as franchised restaurants, governmental properties, hospitals, etc. In these cases, the cost and/or market approaches may be more suitable in estimating fair market value.

When possible, the most accurate form of appraisal should be used, but because of the difficulty in obtaining necessary data from the taxpayer, or due to the lack of comparable commercial and/or industrial properties, choice between the alternative appraisal methods may be limited.

2.2.3 **Industrial and commercial site classification.** - For purposes of valuing active and residual industrial and commercial land in West Virginia, valuing sites shall be separated into four (4) broad categories: heavy industrial sites, light industrial or commercial sites, industrial parks, and mine sites. These sites shall be further classified when appropriate into active and residual portions. These classifications will be considered when applying and establishing the valuation method to the industrial and/or commercial properties.

2.3 **Definitions.**

2.3.1 "Active industrial or commercial land" means that portion of land used for industrial and commercial purposes.

2.3.2 "Capitalization rate" means a rate used to convert an estimate of future income to an estimate of present market value.

2.3.3 "Commercial property" means income producing real property used primarily but not exclusively for the sale of goods or services, including but not limited to offices, warehouses, retail stores, apartment buildings, restaurants and motels.

2.3.4 "Cost approach" means the appraisal process in which replacement cost of improvements, less all types of depreciation, is added to a land value in determining an estimate of the fair market value for improved real property.

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

2.3.6 "Economic rent" means the rental amount which a space or property would attain in the open market at the time of appraisal, whether it is lower, higher or the same as the actual contract rent.

2.3.7 "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.

2.3.8 Functional obsolescence. - The loss of value due to factors such as excess capacity, changes in technology, flow of material, seasonal use, part-time use or other like factors. The inability to perform adequately the function for which an item was designed.

2.3.9 "Freehold estate" means an estate in land or other real property, of uncertain duration; that is, either of inheritance or which may possibly last for the life of a tenant at the least. For an estate to be freehold it must possess two (2) characteristics:

2.3.9.1 Immobility.

2.3.9.2 Indeterminate duration (no fixed termination of the interest).

2.3.9.3 In valuing a leasehold:

2.3.9.3.a The total value of the property must be estimated and then allocated among the various interests in the property under the terms of the lease, and

2.3.9.3.b The appraiser must determine whether or not value has been created as a result of a favorable lease, in addition to the total value of the property.

2.3.9.4 In deciding whether a leasehold has value, and if so, what value to assign, the appraiser must:

2.3.9.4.a Estimate the value of the entire property, as though not encumbered by the lease, then

2.3.9.4.b Estimate the value of one (1) of the partial interests, either the leasehold estate of the lessee or the leased fee of the lessor.

2.3.9.4.c The value of the partial interest thus arrived at is deducted from the value of the entire property to obtain the value of the other partial interest.

2.3.9.5 To value a leasehold interest, the appraiser shall consider the present (discounted) worth of the rent saving, when the contractual rent at the time of appraisal is less than the current market rent. If the land is improved by the lessee, then the value of the leasehold interest shall be the value of the saving in ground rent, if any, in addition to the value (not cost) of the improvements of the lessee. If the contractual rent is greater than the currently established market rent, the present worth of the difference shall be subtracted from the value of the improvement.

2.3.9.6 When a property is under long-term lease to a prime tenant, such as a nationally-known chain store concern, and the estimated useful life of the building exceeds the term of the lease, the "Property Residual Technique" of evaluation may be used along with other generally accepted appraisal techniques, i.e., cost and market data approaches.

2.3.10 "Gross lease" means a lease agreement wherein the lessor pays all fixed charges (property taxes, maintenance, etc.).

2.3.11 "Heavy industrial site" means an industrial site containing five (5) acres or more of land.

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

2.3.13 "Industrial parks" means a parcel or group of parcels dedicated primarily to commercial and industrial development.

2.3.14 "Leased fee" means the interest remaining in one who has granted possession and occupancy to another for a designated term under a lease contract. Generally, it is the interest of the owner in his property after it has been leased.

2.3.15 "Leasehold" and "leasehold estate" mean an interest in real property created by a lease contract. The leasehold is the right to occupy and use the property for the term fixed in the lease, at a stated rental, and subject to conditions set forth in the contract.

2.3.16 "Light industrial or commercial site" means an industrial site containing less than five (5) acres of land.

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

2.3.18 "Mine sites" means a parcel of land containing the mine portal and/or shaft, parking lots, water treatment facilities, mine fan areas, refuse piles and preparation plant sites.

2.3.19 "Net rental" means an agreement specification whereby the lessor receives an annual rent net to him, with the lessee paying all property taxes, insurance and cost of building maintenance, as well as operating expenses.

2.3.20 "Physical deterioration" means a loss in value due to natural wear and tear of property resulting from age, use, abuse, etc.

2.3.21 "Property residual method of valuation" means that, at the expiration of the term of the lease, even though the building may have little value, the land will have a reversionary value. Both the income stream for the estimated useful life of the building and the reversionary interest in the land are discounted to present worth. This method is applicable where the building is old, the site under-improved, or the improvements have a short remaining useful or economic life.

2.3.22 "Replacement cost" means the cost of constructing a building or improvement having the same utility, but using modern materials, design, and workmanship.

2.3.23 "Residual industrial or commercial land" means that portion of a parcel of real estate that is currently nonproductive in terms of the industrial or commercial activity located thereon. This classification of land would include land held for industrial expansion, land marginally suitable for industrial use and excess acreage.

2.4 **Valuation of leaseholds in industrial and commercial real properties.**

2.4.1 **General.**

2.4.1.1 A leasehold in real property is taxable for ad valorem property tax purposes if it has a separate and independent value from the freehold. **Great A&P Tea Co., Inc. v. Davis, West Virginia**, 278 S.E.2d 352 (1981). Where leaseholds are of short duration, the rent paid will usually reflect income to the owner of the freehold commensurate with the fair market value of the real property. Under ordinary conditions, the leasehold itself will not have any ascertainable market value. Consequently, in the normal circumstance, the appraised value of the freehold subject to a leasehold shall be determined in the same manner that the appraised value of similar commercial or industrial real property not subject to a leasehold is determined.

2.4.1.2 However, under circumstances involving long-term leaseholds where the leasehold is itself a marketable asset of value, the leasehold shall be valued as hereinafter provided in this regulation. The leasehold interest being a chattel real shall be listed and taxed as Class III or Class IV tangible personal property depending on the location of the freehold. **See** West Virginia Code §§ 11-5-3, 11-5-4 and 11-8-5.

2.4.1.3 The appraised value of a freehold estate shall be the appraised value of the freehold determined without regard to the leasehold, minus the appraised value of the leasehold.

2.5 **Valuation of commercial and industrial personal property.**

2.5.1 **General.** - The object of these regulations is to provide methodologies for appraising commercial and industrial furniture, fixtures, machinery, equipment, inventory, material and supplies.

2.5.2 **Situs.**

2.5.2.1 The situs of commercial and industrial furniture, fixtures, machinery, equipment, inventory, material and supplies shall depend upon an analysis of the residence of the owner, and the location of the personal property and whether the personal property is subject to personal property taxation by another state and is taxed by the other state.

2.5.2.2 All commercial and industrial personal property belonging to persons or corporations residing in this State, whether such property be in or out of the State shall be taxable, as personal property, unless the property be actually and permanently located in another state, and is subject to taxation as personal property and is actually taxed as personal property in the other state.

2.5.2.3 All commercial and industrial personal property located within this State, though owned by persons or corporations residing in another state shall be taxable as personal property by this State.

2.5.3. **Valuation of commercial and industrial personal property.**

2.5.3.1 In determining an estimate of fair market value, three (3) approaches to fair value will be considered and used where applicable: (A) cost, (B) income, and (C) market. (For appropriate definitions and discussion of these methods, **see** Section 2.2.1 of these regulations.)

2.5.3.2 **Correlation.** - Once generated, the various estimates of value will be considered in arriving at a final value estimate. However, of the three (3) approaches to value, the cost approach may be most consistently applied to machinery, equipment, furniture, fixtures, and leasehold improvements because of the availability of data. The market approach is used less frequently, principally due to a lack of meaningful sales. The income approach is not normally used because of the difficulty in estimating future net benefits to be derived except in the case of certain kinds of leased equipment.

When possible, an audit appraisal method should be used, but because of the difficulty in obtaining necessary accounting data from the taxpayer, or due to the lack of comparable commercial and/or industrial personal properties, a physical appraisal method may be necessary.

2.5.3.3 **Adjustments.** - When physically inspecting commercial and industrial personal property for appraisal, three (3) types of depreciation should be considered; physical deterioration, economic obsolescence and functional obsolescence.

2.5.3.4 **Valuation of common commercial and industrial personal property.** - Frequently encountered commercial and industrial personal properties common to numerous businesses within a taxing district shall be valued using current appraisal guidelines furnished by the Tax Commissioner to local assessors.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer help we can get)

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: 1P TITLE: 110 Tax Department

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: John M 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.