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STATE OF WEST VIRGINIA

SECRETARY OF STATE

Charleston 25305

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Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

NOTICE OF THE EXPIRATION OF AN EMERGENCY RULE

AGENCY: TAX DEPARTMENT
RULE: PROCEDURES FOR ORDERS TO ASSESSORS
DATE FILED AS AN EMERGENCY RULE: MAY 27, 1987
DATE RULE EXPIRES: NOVEMBER 24, 1987

THE ABOVE EMERGENCY RULE EXPIRED ON NOVEMBER 24, 1987 DUE TO THE TAX DEPARTMENT'S FAILURE TO FILE THE PROPOSED RULE WITH THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE WITHIN 180 DAYS AS REQUIRED BY WV CODE 29A-3-15(a)(3).

A handwritten signature in black ink, appearing to read "Rich O. Hartman".

Rich O. Hartman, Dir.
Admin. Law Div.

1987 DEC 23 10 2 39
FBI FBI

FILED
1987 MAY 27 PM 1:49
SECRETARY OF STATE

NOTICE OF EMERGENCY RULE

RULE TITLE: Procedures For When The Tax Commissioner, Pursuant To W. Va. Code § 18-9A-11(g), Orders A County Assessor Or County Commission, Or Both, To Comply With The Provisions Of West Virginia Code, Chapter 11, And W. Va. Code § 18-9A-11, Or When The Tax Commissioner Enters A County To Fix The Assessments At The Required Ratio.

The attached rule is filed as an Emergency Rule. The facts and circumstances constituting the emergency are as follows: There are several counties in which the county assessor and/or county commission have not complied with the provisions of W. Va. Code § 18-9A-11 in setting proper valuations of property for assessment purposes. As it is essential for those activities to be completed by July 1, 1987, these emergency legislative regulations are essential.


Michael E. Caryl
State Tax Commissioner



State Tax Department
of West Virginia

Charleston 25305

ARCH A. MOORE, JR.
GOVERNOR

MICHAEL E. CARYL
COMMISSIONER

FILED
1987 MAY 27 PM 1:48

SECRETARIAT OF STATE

May 27, 1987

Honorable Ken Hechler
Secretary of State
State Capitol Building
Charleston, WV 25305

Dear Mr. Hechler:

Enclosed is an emergency legislative rule pertaining to the procedures in effect when the Tax Commissioner orders a county assessor or county commission to comply with the provisions of W. Va. Code § 18-9A-1(g) and West Virginia Code, Chapter 11, or when the Tax Commissioner enters a county for the purpose of fixing the assessment at the required ratio.

This rule is being proposed pursuant to authority granted in W. Va. Code §§ 11-1-2 and 11-1-6.

The public may submit written comments on the merits of this emergency legislative rule through July 10, 1987. See attached "Notice Of Public Comment Period On Proposed Rule."

Very truly yours,


Michael E. Caryl
State Tax Commissioner

jm/ss
Enclosure

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FILED IN THE OFFICE OF
THE SECRETARY OF STATE

July 8, 1987

THIS DATE July 8, 1987
ADMINISTRATIVE LAW DIVISION

NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

AGENCY: Tax Department (Title 110)

RULE: New Rule, Series 3B Procedures for When the Tax Commissioner, Pursuant to W. Va. Code §18-9A-11(g), Orders A County Assessor or County Commissioner, or Both, to Comply With the Provisions of West Virginia Code, Chapter 11, And West Virginia Code §18-9A-11, or When the Tax Commissioner Enters a County to Fix the Assessments at the Required Ratio

DATE FILED AS AN EMERGENCY RULE: May 27, 1987

DECISION NO. 8-87

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule be approved. A copy of the complete decision with required findings is available from this office.


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Secretary of State

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DECISION

Emergency Rule Decision (ERD 8-87)

AGENCY: Tax Department
RULE: New Rule, Series 3B, Procedures for When the Tax Commissioner, Pursuant to W. Va. Code §18-9A-11(g), Orders a County Assessor or County Commission, Or Both To Comply with the Provisions of W. Va. Code, Chapter 11, and W. Va. Code §18-9A-11, or When the Tax Commissioner Enters a County to Fix the Assessments at the Required Ratio

DATE FILED AS AN EMERGENCY RULE: May 27, 1987

- par. 1 The Tax Department has filed the above series 3B as an emergency rule.
- par. 2 West Virginia Code 29A-3-15A requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [29A-3-15a(a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the ERD is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.

par. 6 The Tax Department has filed this emergency rule with supporting documents with the Secretary of State on May 27, 1987, and with the LRMRC on June 25, 1987.

par. 7 It is the determination of the Secretary of State that the Tax Department has complied with the procedural requirements of WV Code §29A-3-15.

par. 8 (B) Statutory Authority -- WV Code §11-1-2 reads in part:

It shall be the duty of the tax commissioner to see that the laws concerning the assessment and collection of all taxes and levies, whether the State or of any county, district or municipal corporation thereof, are faithfully enforced. He shall prepare all proper forms and books for the use and guidance of assessors, and shall perform all such other duties as may be required by law.

In case of the failure of any assessing or collection officer in the discharge of any duty, imposed upon him by law, the said tax commissioner shall, after due notice to any such assessor or collecting officer, proceed to enforce such penalty as may be provided by law. . .

par. 9 It is the determination of the Secretary of State that the Tax Department has not exceeded its statutory authority in the promulgation of these emergency rules

par. 10 (C) Emergency: WV Code 29A-3-15(g) defines "emergency" as follows:

(g) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

par. 11 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

par. 12 The facts and circumstances as presented by the Tax Department are as follows:

There are several counties in which the county assessor and/or county commission have not complied with the provisions of West Virginia Code §18-9A-11 in setting proper valuations of property for assessment purposes. As it is essential for those activities to be completed by July 1, 1987, these emergency legislative regulations are essential.

- par. 13 The Legislature has directed the the reappraisal program be completed by July 1, 1987. The emergency categories of time limitation and substantial harm would apply to this proposal.
- par. 14 It is the decision of the Secretary of State that this proposal by the Tax Department is in procedural compliance with WV Code 29A-3-15; does not exceed the statutory authority of the Tax Department; and that the facts and circumstances presented constitute an emergency. Therefore, the Secretary of State decides that this emergency rule should be approved.
- par. 15 This decision shall be cited as Emergency Rule Decision 8-87 or ERD 8-87 and may be cited as precedent. This decision is available from the Secretary of State's office and has been filed with the Tax Department, the Attorney General and the Legislative Rule Making Review Committee.

Ken Hechler

KEN HECHLER
SECRETARY OF STATE FILED IN THE OFFICE OF
THE SECRETARY OF STATE

THIS DATE July 8, 1987
ADMINISTRATIVE LAW DIVISION

Entered _____