

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #5

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

AGENCY: Tax Department TITLE NUMBER: 110

CITE AUTHORITY: WV Code 11-1-2 and 11-1-6

RULE TYPE: PROCEDURAL XXXX INTERPRETIVE _____

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

AMENDMENT TO AN EXISTING RULE: YES _____, NO XXX

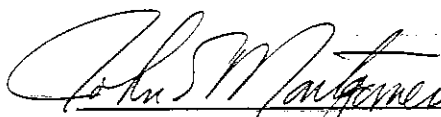
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: SERIES 3b

TITLE OF RULE BEING ADOPTED: Procedures for when the Tax Commission
orders a county assessor or county commission or both
to comply with tax assessments.

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS January 21, 1988


for Michael E. Garyl
State Tax Commissioner



State Tax Department
of West Virginia

Charleston 25305

ARCH A. MOORE, JR.
GOVERNOR

MICHAEL E. CARYL
COMMISSIONER

December 22, 1987

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

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Dear Mr. Hechler:

On May 27, 1987, the following titled legislative rule was filed in the State Register.

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 § 11-9A-11, Or When The Tax Commissioner Enters A County To Fix The Assessments At The Required Ratio.

A public comment period commenced on the day of filing and ended on July 10, 1987. No comments were received.

This Office has re-evaluated this rule and has determined that it should be classified and designated as a Procedural Rule. As a result, this Office is hereby re-filing the above-referenced rule as a Procedural Rule. Because a public comment period was held, this Office is of the opinion that no additional similar action is required.

Very truly yours,

Michael E. Caryl
State Tax Commissioner

jm/ss
Enclosure

cc: Michael E. Mowery, Counsel
Legislative Rule-Making Review Committee

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APPROVED
WEST VIRGINIA PROCEDURAL REGULATIONS
STATE TAX DEPARTMENT
TITLE 110
SERIES 3b
(1987)

Filed: December 22, 1987

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

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WEST VIRGINIA PROCEDURAL REGULATIONS
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FILED: December 22, 1987

Subject: 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.

§ 110-3b-1 General.

1.1 Type of Regulations. - These regulations are ~~Procedural Regulations~~ defined in W. Va. Code § 29A-1-2(g).

1.2 Scope. - These procedural regulations provide guidelines and procedures to be followed whenever the Tax Commissioner, pursuant to West Virginia Code § 18-9A-11(g), determines that in any year a county assessor or a county commission has failed or refused to comply with the provisions of West Virginia Code § 18-9A-11 in setting the valuations of property for assessment purposes in any class or classes of property in the county, and directs the county assessor and the county commission to make such corrections in the valuations as may be necessary so that they shall comply with the requirements of Chapter 11 of the West Virginia Code and W. Va. Code § 18-9A-11, or the Tax Commissioner enters the county to fix the assessment at the required ratios.

1.3 Authority. - These procedural regulations are issued under the authority of W. Va. Code §§ 11-1-2 and 11-1-6.

1.4 Filing Date. - These procedural legislative regulations were originally promulgated in accordance with W. Va. Code § 29A-3-15 and were filed in the State Register on May 27, 1987. Effective with this filing, these regulations are reclassified as procedural regulations.

1.5 Effective Date. - These procedural legislative regulations become effective 30 days after filing in the State Register.

§ 110-3b-2 Notice From the Tax Commissioner to the County Assessor and the County Commission of Improper Assessment.

2.1 Whenever the Tax Commissioner shall find from all the facts before him that a county has assessed one or more property classes in a manner inconsistent with Chapter 11 of the West Virginia Code or W. Va. Code § 18-9A-11, he shall give notice, in writing, to the county assessor and the county commission, specifying the property classes that have been improperly assessed, the nature of the defect or defects and the requirements which the county assessor or the county commission must meet to properly assess for the current tax year.

2.2 If the county's assessment is below the requirements of W. Va. Code § 18-9A-11 in one or more classes, the Tax Commissioner shall further give the levying bodies notice that they may revise their levy rates using the procedure found in Section 110-3b-9 of these regulations.

§ 110-3b-3 Notice of Order to Increase Assessments.

3.1 Whenever the Tax Commissioner shall, pursuant to W. Va. Code § 18-9A-11(g), order the county assessor or the county commission, or both, to make corrections in the assessed valuations for the year to comply with the requirements Chapter 11 of the West Virginia Code and W. Va. Code § 18-9A-11, he shall give notice to taxpayers by publication of the order by a Class II-O legal advertisement in compliance with the provisions of W. Va. Code § 59-3-1 et seq., and the publication area shall be the county.

§ 110-3b-4 Review and Resubmission of the Property Books by the County Assessor.

4.1 Whenever the Tax Commissioner shall, pursuant to W. Va. Code § 18-9A-11(g), order the county assessor to make corrections in the assessed valuations for the year to comply with the requirements of Chapter 11 of the West Virginia Code and W. Va. Code § 18-9A-11, the assessor shall review his work, make the changes necessary to bring his books into compliance with Chapter 11 of the West Virginia Code and W. Va. Code § 18-9A-11, and resubmit the property books for the current year to the county commission. The assessor and his assistants shall attend the special sessions of the county commission held pursuant to the order and shall render every assistance possible in connection with the value of property assessed by them.

4.2 After the county commission completes the review of the property books, the assessor shall notify each levying body in the county of an increase in revised assessed value for one or more classes of property located within the jurisdiction of the levying body.

§ 110-3b-5 Reassessment by Tax Commissioner.

5.1 Whenever the Tax Commissioner determines that the county assessor is failing or has refused to comply with the order of the Tax Commissioner, made pursuant to West Virginia Code § 18-9A-11(g), to make such corrections in the assessed valuations for the year as may be necessary so that they comply with

the requirements of Chapter 11 of the West Virginia Code and W. Va. Code § 18-9A-11, the Tax Commissioner may, in his discretion, take possession of the property books and fix the assessments so that the totals by class comply with Chapter 11 of the West Virginia Code and W. Va. Code § 18-9A-11. The Tax Commissioner may remove the property books and any other pertinent information relating to assessed value from the county to any office of the State Tax Department.

5.2 Whenever the Tax Commissioner takes possession of the property books and fixes the assessments so that the totals by class comply with Chapter 11 of the West Virginia Code and W. Va. Code § 18-9A-11, he shall give the taxpayers the same notice which Section 110-3b-6 of these regulations requires the assessor to give.

§ 110-3b-6 Notice of Increased Assessment.

6.1 If the assessor, while complying with the order of the Tax Commissioner, determines that the revised assessed valuation of any item of real property is more than ten percent greater than the valuation assessed for that item in the last tax year and the increase is entered in the property books as provided in W. Va. Code § 11-3-19, the assessor shall forthwith give notice of the increase to the owner or the person controlling the property as provided in W. Va. Code § 11-3-2.

6.2 The county assessor must give the notice at least five days prior to the special session at which the county commission meets for the purpose of review of the revised assessments for the tax year and advise the person assessed or the person controlling the property of his right to appear and seek an adjustment with respect to classification and taxability of property resulting from a clerical error, or a mistake occasioned by an unintentional or inadvertent act as distinguished from a mistake growing out of negligence or the exercise of poor judgment. The notice shall be made by first class United States postage mailed to the address of the person assessed or the person controlling the property for payment of tax on the item in the previous year.

6.3 Where the valuation in any one or more classes generally increase, then, in lieu of notice by first class mail, the notice shall be by publication by a Class I-O legal advertisement in compliance with the provisions of W. Va. Code § 59-3-1 et seq., and the publication area shall be the county.

§ 110-3b-7 Review by County Commission.

7.1 Pursuant to W. Va. Code § 7-1-5, county commissions have the duty to:

review and equalize the assessments made by the assessors;
to inspect and review the lists of property, both real and personal, made up by the assessor and his deputies for taxable purposes. . .

7.2 A county commission is authorized by W. Va. Code § 7-1-2 to hold special sessions "whenever the public interest may require it." Whenever the Tax Commissioner shall order the county assessor or the county commission to correct the valuation of property pursuant to W. Va. Code § 18-9A-11(g), the county commission shall hold a special session to perform their duties in compliance with the order of the Tax Commissioner.

7.3 The clerk of the county commission shall publish notice of the time, place and general purpose of the special session of the county commission meeting as a Class I-O legal advertisement in compliance with the provisions of W. Va. Code § 53-3-1 et seq., and the publication area shall be the county. The expense of publication shall be paid out of the county treasury.

7.4 The county commission shall meet in special session for the purpose of reviewing the revised assessment made by the assessor or the Tax Commissioner. The county commission shall correct all errors with respect to classification and taxability of property resulting from a clerical error, or a mistake occasioned by an unintentional or inadvertent act as distinguished from a mistake growing out of negligence or the exercise of poor judgment, and they shall cause to be done whatever is necessary to make the valuation comply with the provisions of West Virginia Code Chapter 11 and W. Va. Code § 18-9A-11.

7.5 Should the county commission fail or refuse to meet in special session to review the revised assessment, the Tax Commissioner shall notify the taxpayers of their rights under W. Va. Code § 11-3-27 by publishing as a Class II-O legal advertisement in compliance with the provisions of W. Va. Code § 59-3-1 et seq., and the publication area shall be the county.

7.6 No assessment shall be increased over and above the revised assessments without giving the property owner at least five days' notice, in writing and signed by the president of the commission, of the intention to make such increase. Service shall be sufficient if made upon the property owner, or upon his agent or attorney in person, or if sent by registered mail to such property owner, his agent or attorney, at their respective last known place of abode. If the taxpayer, his agent or attorney, is not found and have no known place of abode, then notice shall be published as a Class I-O legal advertisement in compliance with the provisions of W. Va. Code § 59-3-1 et seq., and the publication area shall be the county. The publication date shall be at least five days prior to final action making the increase.

7.7 When it is desired to increase the entire valuation in any one district by a general increase, notice shall be given by publication thereof as a Class I-O legal advertisement in compliance with the provisions of W. Va. Code § 59-3-1 et seq., and the publication area for such publication shall be the county. The date of the last publication shall be at least five days prior to final action making the increase in valuation. When an increase is made, the same valuation shall not again be changed unless notice is again given as provided in this section.

7.8 After the county commission completes the review of the property books, a majority of the commission shall sign a statement that it is the completed assessment of the county for the year, and that the assessment complies with the provisions of Chapter 11 of the West Virginia Code and W. Va. Code § 18-9A-11. If the county commission should refuse to sign the statement for any reason, the Tax Commissioner or a person he designates shall, pursuant to W. Va. Code § 18-9A-11, perform any act required of the county commission by Chapter 11 of the West Virginia Code. The property books shall then be delivered to the assessor for extension of the levies, or if the levies have already been extended based on the revised assessments, the property books shall then be delivered to the sheriff.

§ 110-3b-8 Grounds for Removal from Office.

8.1 Failure or refusal of the county assessor or county commission to comply with the provisions of Chapter 11 of the West Virginia Code and W. Va. Code § 18-9A-11 constitute grounds for removal from office.

§ 110-3b-9 Revision of Levy Rates.

9.1 Each levying body in the county has the power in special session within forty (40) days after the levying body fixed the rates of levy on each class of property on the third Tuesday in April to rescind its levy order because of a material change of fact under the following conditions:

9.1.1 The levying body had based its levy rates for the current tax year on the assessed valuation totals for each class of property which the assessor had furnished to them as required by law; and

9.1.2 An order of the Tax Commissioner, made pursuant to W. Va. Code § 18-9A-11(g), required the increase of assessed valuation totals for one or more classes of property located within the jurisdiction of the levying body.

9.2 If a reduction in a levy rate is deemed appropriate, the levying body shall fix its regular or special levy rates, or both, at lesser rates. The lesser rates shall generate the same amount of revenue, within practicable limits, as was originally estimated when it fixed its levy rates on the third Tuesday in April.

9.3 The revised levy rates shall be in the same proportion as the maximums authorized by law under W. Va. Code §§ 11-8-10a, 11-8-12A and 11-8-14a.

9.4 At least five days prior to any such special session, the levying body shall give notice by a Class I-O legal advertisement in compliance with the provisions of W. Va. Code § 59-3-1 et seq. and the publication area shall be the county.

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9.5 Once the levy rates are so revised, the levying bodies shall proceed to amend all documents that the law required be made and filed once the levy rates were fixed on the third Tuesday in April.

§ 110-3b-10 Appeal to Circuit Court.

10.1 An appeal may be taken to the Circuit Court for the county pursuant to the provisions of West Virginia Code § 58-3-1 et seq. within four months after the county commission enters its order under W. Va. Code § 11-3-27.

§ 110-3b-11 Payment of Costs.

11.1 The county commission shall pay all costs incurred by the Tax Commissioner in directing the county assessor and the county commission to make corrections in the valuations or in entering the county and fixing the assessments so that the totals by class comply with West Virginia Code Chapter 11 and W. Va. Code § 18-9A-11.

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§ 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

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KEN HECHLER
Secretary of State

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STATE TAX DEPARTMENT
LEGAL DIVISION
STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

WILLIAM H. HARRINGTON
Chief of Staff

RICH O. HARTMAN
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

TO: John Montgomery

FROM: RICH O. HARTMAN, DIR. ADMIN. LAW DIV.

DATE: March 16, 1988

THE ATTACHED RULE(S) RECENTLY FILED BY YOUR AGENCY HAVE BEEN ENTERED INTO THE COMPUTER. PLEASE REVIEW AND PROOF AND RETURN WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS PLEASE SIGN THIS MEMO AND RETURN TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF YOUR RULE(S) 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 3B

THE ATTACHED RULE(S) HAVE BEEN REVIEWED AND ARE CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

THE ATTACHED RULE(S) HAVE BEEN REVIEWED AND NEEDS CORRECTED. THESE CORRECTIONS HAVE BEEN MARKED.

SIGNED: John Montgomery

TITLE OF PERSON SIGNING: Senior Technical Attorney

DATE: 4-11-88