

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

FILED

Jul 13 3 08 PM '93

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

Form #2

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: State Tax Division TITLE NUMBER: 110

RULE TYPE: Legislative; CITE AUTHORITY W. Va. Code §§ 11-10-5 & 11-6A-4

AMENDMENT TO AN EXISTING RULE: YES NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 6

TITLE OF RULE BEING AMENDED: Pollution Control Facilities

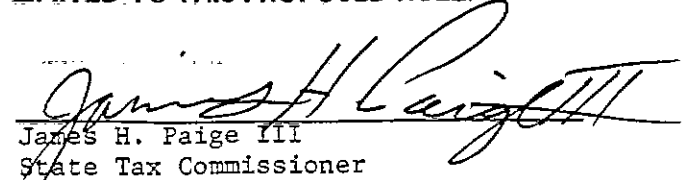
IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON August 12, 1993 AT 9:00. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

Department of Tax and Revenue
Legal Division
P.O. Box 1005
Charleston, WV 25324-1005

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THIS PROPOSED RULE.


James H. Paige III
State Tax Commissioner

ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL



State of West Virginia
Department of Tax and Revenue
TAX DIVISION
P. O. Box 2389
Charleston, WV 25328-2389

GASTON CAPERTON
GOVERNOR

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OFFICE JAMES H. PAIGE III
SECRETARY SECRETARY

CONSENT TO FILE RULE

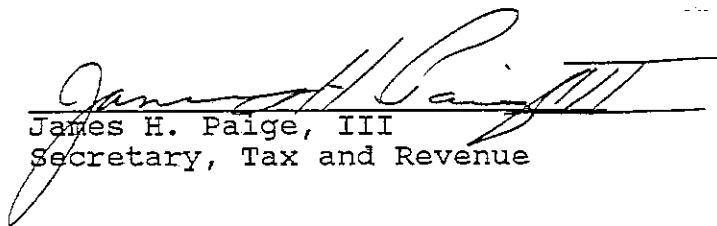
July 13, 1993

To Whom It May Concern:

Title of Rule: Pollution Control Facilities
Title Number: 110
Series Number: 6

Pursuant to West Virginia Code § 5F-2-2(a), the undersigned hereby consents to the filing of the foregoing rule.

Signed this 20th day of July, 1993.


James H. Paige, III
Secretary, Tax and Revenue

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FISCAL NOTE FOR PROPOSED RULES

Rule Title: Pollution Control Facilities

Type of Rule: Legislative Interpretive Procedural

Agency: State Tax Division Address State Capitol
Charleston, WV 25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$
Personal Services	0	0	0	0	0
Current Expense	0	0	0	0	0
Repairs and Alterations	0	0	0	0	0
Equipment	0	0	0	0	0
Other	0	0	0	0	0

2. Explanation of above estimates:

The amendments to the subject rule should have no effect.

3. Objectives of these rules:

The rule authorizes the separation from the value of the total facility that value which is attributable to the pollution control activity.

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

Any economic impact on State government should be negligible at best.

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

There may be an increase in property tax revenues at the local level.

C. Economic Impact on Citizens/Public at Large.

There should be no economic impact on this group.

Date: July 13, 1993

Signature of Agency Head or Authorized Representative


James H. Paige III
State Tax Commissioner

BRIEF SUMMARY

This rule as amended authorizes the separation from the value of the total manufacturing facility, when the pollution control facility produces a profitable by-product, that portion of value attributable to the pollution control activity. Additionally, disputes as to what qualifies as a pollution control facility are deemed to be appealable under W. Va. Code § 11-3-24a.

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TITLE 110
LEGISLATIVE RULES
TAX DEPARTMENT

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SERIES 6
POLLUTION CONTROL FACILITIES

§110-6-1. General.

1.1. Scope. -- These regulations established general operating procedures for the tax treatment of pollution control facilities.

1.2. Authority. -- W. Va. Code §11-6A-4

1.3. Filing Date. -- November-17-1981 1993

1.4. Effective Date. -- November-17-1981 1993

§110-6-2. Definitions.

2.1. "Commissioner" means the State Tax Commissioner, or his delegate.

2.2. "Facility" or "Pollution Control Facility" means any personal property designed, constructed, or installed primarily for the purpose of abating or reducing water or air pollution or contamination by removing, altering, disposing, treating, storing, or dispersing the concentration of pollutants, contaminants, wastes or heat in compliance with air or water quality or effluent standards prescribed by or promulgated under the laws of this state or the United States, the design, construction, and installation of which personal property was approved as a pollution control facility by the Water Resources Division of the Department of Natural Resources or the Air Pollution Control Commission, as the case may be. The definition of facilities eligible for salvage tax treatment shall be strictly construed so as to include only such equipment and devices as are installed primarily and immediately to abate air or water pollution. ~~These items of personal property which may coincidentally comply with air or water quality or effluent standards prescribed by or promulgated under the laws of this state or the United States, but which are primarily installed for plant operations or are productive, or add to the economic value of a business enterprise or have a market value after installation in excess~~

~~of salvage value, will not be deemed eligible for salvage tax treatment.--~~

2.3. "Personal Property" means things of value, moveable and tangible, which are the subjects of ownership. This definition is found as a part of West Virginia Code §11-5-3 and applied to all of Chapter 11.

2.4. "Moveable", as used in section 2.3, relates to a device or piece of equipment capable of being moved from one location to another.

2.5. "Salvage Value" means the price for which such facility would sell in place if voluntarily offered for sale by the owner thereof; that is to say, the scrap value of the material of an eligible facility less the cost of removal of said facility. Administratively, salvage value will be five percent of original cost.

§110-6-3. Approval as Pollution Control Facility.

3.1. Any owner or taxpayer requesting salvage valuation for a facility under the authority of W. Va. Code §11-6A-3 must receive approval from the appropriate state agency governing the control of air or water pollution. The approval must state that the facility subject to salvage value consideration is designed, constructed or installed primarily for the purpose of abating air or water pollution, and does abate or reduce water or air pollution in compliance with air or water quality standards prescribed under the laws of this state or the United States.

§110-6-4. Allocation or Separation of Values.

4.1. Where the pollution control facility produces a profitable by-product or where a part of such facility is required for the operation of the business without regard to the requirements of state or federal air or water quality standards, the tax commissioner may allocate or separate that portion of value attributable to the pollution control activity.

§110-6-35. Recommendation of Values to County Assessor.

35.1. Each county assessor will be notified before ~~August~~ December first of any eligible facility in his county on the preceding July first assessment day together with the salvage value of each such facility. Said notice will

recommend that the assessor use the salvage value provided as the appraised value of such facility.

§110-6-46. Annual List of Eligible Facility Items.

46.1. The tax commissioner, annually before July tenth, will prepare a list of apparatus, equipment and components which are eligible for salvage treatment under provisions of Article 6A, Chapter 11 of the Code and these regulations. Such list shall be revised annually to include items made eligible by administrative or judicial decision.

§110-6-57. Administrative Remedy.

57.1 Any taxpayer or government official claiming to be aggrieved or damaged by the tax commissioner by the inclusion or exclusion of a facility or any component thereof, may appeal such action to the commissioner. ~~The commissioner of his representative shall issue a written opinion stating the reason thereof.~~ Disputes concerning whether an item of personal property qualifies as a "facility" or "pollution control facility" as defined in section 2.2 above shall be deemed to be matters of classification or taxability and as such are appealable under the provisions of W. Va. Code §11-3-24a.