WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: State Tax Commission TITLE NUMBER: 110

CITE AUTHORITY W. Va. Code § 11-6F-5

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 PROPOSED: 6F

TITLE OF RULE BEING PROPOSED: Property Tax Valuation of Certain Manufacturing Property.

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.

Robin C. Capchart, State Tax Commissioner

$7.40

TITLE 110
MODIFIED
LEGISLATIVE RULE
STATE TAX COMMISSION

SERIES 6F
PROPERTY TAX VALUATION OF CERTAIN MANUFACTURING PROPERTY

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§ 110-6F-1. General.

1.1 **Scope.** -- This legislative rule explains and clarifies the special property tax valuation provisions set forth in West Virginia Code § 11-6F-1 et seq.

1.2 **Authority.** -- This legislative rule is issued under the authority of W. Va. Code § 11-6F-5.

1.3 **Filing Date.** --

1.4 **Effective Date.** --

§ 110-6F-2. Definitions. -- As used in this rule and unless the context clearly requires a different meaning, the following terms have the meaning ascribed in this section.

2.1 **"Betterment." --** See Section 2.3.1.1.b.2 of this rule.

2.2 **"Certified capital addition property" and "qualified capital addition to a manufacturing facility"** -- The terms "certified capital addition property" and "qualified capital addition to a manufacturing facility" are defined in West Virginia Code § 11-6F-2. Those definitions incorporate the terms "personal property" and "real property," which are, in turn, in part defined by reference to certain statutory definitions of personal and real property which are broad and expansive in scope. However, West Virginia Code § 11-6F-4 of the Act limits the property to which the Act applies to long term capital asset type property, and makes the Act inapplicable to intangibles, inventories or expense items such as work in process, raw materials, or consumable supplies, etc. which are owned or used by the Taxpayer for a comparatively short time and then sold, consumed, used up or disposed of. The Act repeatedly refers to "capital" additions as the qualifying property.

2.2.1 The Act provides special property tax valuation for capital additions, and not for purchases of inventory and other non-capitalized property. Therefore, the definitions of the terms "qualified capital addition to a manufacturing facility" and "certified capital addition property" do not mean or include certain types of property:

2.2.1.1 **Exclusions.** -- The following property or costs of property (by lease or purchase) for the following are excluded from the definitions of "certified capital addition property" and "qualified capital addition to a manufacturing facility," without regard to whether the costs or investments in the property are capitalized or otherwise: repairs, facility maintenance or other maintenance, airplanes, motor vehicles licensed by the Division of Motor Vehicles, inventories, non-capitalized property, property that does not

create additional manufacturing production capacity and replacement property, except that certain replacement property qualifies as specified in this rule. Notwithstanding the fact that pollution abatement equipment typically does not create additional manufacturing capacity, investment in pollution abatement property counts toward the measure of qualified capital addition property. Investment in pollution abatement property shall not mean or include costs of repairs, equipment maintenance or ongoing operating expenses associated with pollution control property.

2.2.1.1.a For purposes of this definition, the term "non-capitalized property" means property, the cost of which is not required to be capitalized for federal income tax purposes under the Internal Revenue Code or the rules, regulations or policies implemented or promulgated by the United States Internal Revenue Service. Property is capitalized for purposes of the Act when the cost of the property is required to be capitalized for federal income tax purposes under the Internal Revenue Code or the rules, regulations or policies implemented or promulgated by the United States Internal Revenue Service.

2.2.1.1.b For purposes of this definition, the term "replacement property" means property acquired by purchase or lease for the purpose of replacing other property in a facility, the investment in which would not have been made but for the loss of service, destruction, removal or other loss of the property which the replacement property is intended to replace.

2.2.1.1.b.1 Replacement property shall not typically constitute qualified capital addition property, notwithstanding that the property may be capitalized for federal income tax purposes or a lease of the property may otherwise qualify under this rule and notwithstanding the fact that its construction or installation may result in an increase in productive capacity.

2.2.1.1.b.2 However, significant betterments shall be recognized as qualified capital addition property. Betterments, in combination with other qualified capital addition property which (including the betterment) has an aggregate cost in excess of $50 million, may be treated as a qualified capital addition to a manufacturing facility. The term "betterment" means and is limited to replacement property which enlarges productive capacity, economic efficiency or the quality, efficiency or extent of pollution abatement capabilities of the facility in which the replacement property is installed or placed. A betterment shall be treated as significant if it enlarges productive capacity, economic efficiency or the quality, efficiency or extent of pollution abatement capabilities of the facility by at least twelve percent over the capacities or capabilities measured at their maximum, of the facility at the time the property which the replacement property is intended

to replace was in operation.

2.2.1.1.b.3 Replacement property which is installed or constructed to replace property that was destroyed by fire, explosion, flood, storm or other casualty constitutes qualified capital addition property, but the measure of the cost of the replacement property for purposes of the Act shall be reduced by any insurance proceeds or other proceeds received in compensation for the loss.

Example 1:

Company XYZ is a large manufacturing firm. A large boiler used in the manufacturing process is replaced in the facility due to the wear and physical deterioration of the boiler resulting from use in the manufacturing process.

Company XYZ replaces the old boiler with a new boiler which has a higher pressure rating and productivity than the old boiler. XYZ Company capitalizes the purchase for federal income tax purposes.

The new boiler is not qualified for special valuation under the Act. Even though the replacement of the old boiler is a capitalized investment and even though the new boiler shall improve productivity at the facility, the acquisition and installation of the new boiler is essentially a maintenance operation intended mainly to maintain ongoing day to day operations of the plant. The increase in productive capacity and efficiency were incidental to the installation, not significant and not the primary reason for the investment.

Had the old boiler not worn out, the investment would not have been made. The investment in the new boiler was not intended to result in a significant expansion of the operation. It was a mere replacement of existing property for the purpose of keeping operations going. Only significant betterments constitute qualified capital addition property.

Example 2:

The manufacturing facility suffers a casualty where the boiler building catches fire and the old boiler is destroyed. This is an extraordinary and catastrophic fire. The destruction of the boiler is not the result of ordinary wear associated with the fire used to run the boiler in day to day operation.

The old boiler is replaced with a new boiler, and associated construction occurs. The replacement property costs $2,000,000. The insurance proceeds received by the Taxpayer in compensation for the loss amount to $1,500,000. The amount of the cost of

the new boiler and structure that shall qualify as qualified capital addition property for purposes of the Act is $500,000. It is assumed that other capital additions to the facility are made at the same time so as to aggregate to more than $50 million, in accordance with the requirements of the Act.

2.2.1.1.c Occasionally, manufacturers in West Virginia have seen fit to lease, purchase or construct residential dwellings or housing in West Virginia for the purpose of providing long term or temporary housing for certain management personnel or other company personnel or for visiting dignitaries, company officers or guests of the company. The terms "qualified capital addition to a manufacturing facility" and "certified capital addition property" do not mean or include any houses, entertainment facilities, guest accommodations, dwellings or similar facilities, without regard to whether the property is purchased or leased, or whether the cost of the property is capitalized for federal income tax purposes, and without regard to whether a lease of the property might otherwise qualify under this rule.

2.2.1.1.d The terms "qualified capital addition property," "qualified capital addition to a manufacturing facility" and "certified capital addition property" do not mean or include any property acquired by purchase or lease from or between related entities. The Tax Commissioner may waive this prohibition against related entity acquisitions if the property was acquired from a related entity for its fair market value and there is no manipulation of the cost of, or amount of investment in, qualified capital addition property for the purpose of gaining entitlement to special property valuation under the Act.

2.2.2 **Pollution abatement property or specialized manufacturing production property as certified capital addition property and qualified capital additions to a manufacturing facility.** -- Qualification of property for special valuation under the pollution control facilities provisions of West Virginia Code § 11-6A-1 et seq. or as specialized manufacturing production property under West Virginia Code § 11-6E-1 et seq. shall not affect application of the provisions of the Act. The cost of property to be counted toward the $50 million threshold shall be counted notwithstanding the fact that the property may qualify for special property tax valuation under the aforementioned provisions. However, property subject to valuation under West Virginia Code §§ 11-6A-1 et seq. and 11-6E-1 et seq. shall receive permanent special valuation under those provisions, whereas valuation under the Act applies for a maximum of 10 years.

2.2.3 **Leased property as qualified capital addition property, certified capital addition property or qualified capital additions to a manufacturing facility.** -- The policies that shall govern treatment of leased property for purposes of determining whether it shall be counted toward the cost of qualified capital addition property shall, to the

extent possible, be parallel with the treatment of leased property for purposes of determining whether leased property shall be counted toward the original cost of a preexisting facility, as discussed in the definition of the term "original cost."

2.2.3.1 Leased property shall not typically constitute qualified capital addition property to the lessee because the lessor, and not the lessee, is ordinarily legally responsible for payment of the property tax on leased property.

2.2.3.2 Leased real or tangible personal property which a lessee is required to treat as purchased property for federal income tax purposes may constitute qualified capital addition property to the extent of the amount represented by such property is capitalized for federal income tax purposes if the written lease specifically makes the lessee responsible for payment of property taxes on the leased property.

2.2.3.3 Where the qualified capital addition property in a manufacturing facility incorporates leased tangible personal property under a lease that has a primary term of at least 75% of the useful life of the property, and where the written lease for that property specifically makes the lessee responsible for payment of the property taxes on the leased property, the leased property may constitute qualified capital addition property.

2.2.3.4 Where the qualified capital addition property in a manufacturing facility incorporates leased real property under a lease that has a primary lease term of at least ten years, and where the written lease for that property specifically makes the lessee responsible for payment of the property taxes on the leased property, the leased property may constitute qualified capital addition property.

2.2.3.5 The cost of leased real or tangible personal property for purposes of determining the cost of qualified capital addition property is the discounted present value of the rent reserved for the primary term of the lease, but not to exceed ten years. The discount rate for this computation shall be prescribed by the Tax Commissioner from time to time.

2.2.3.6 The extent to which the cost of leased property may qualify as qualified capital addition property under the Act may be adjusted by the Tax Commissioner, depending on whether the lease payments are reflective of a fair market value lease rate. Only those costs of leased property imposed pursuant to a written lease agreement may qualify to be counted toward the cost of qualified capital addition property.

2.2.3.7 In the case of real or tangible personal property purchased by

a Taxpayer and sold to a leasing company or other entity and then leased back to the Taxpayer which originally purchased the property (a so called sale and lease back): Where the lease otherwise qualifies to be counted toward the measure of qualified capital addition property, the cost of the sale/lease back property to be counted toward the measure of cost of qualified capital addition property is the original purchase price cost of the property to the Taxpayer prior to the sale of the property to the leasing company or lessor.

2.3 **"Derivative products"** -- means manufactured products that are made directly from polymers.

2.4 **"Enrolled" or "enrollment"** -- "Enrollment" is the act of placing property on the property tax rolls or records of the taxing jurisdiction in the name of the Taxpayer. Property is first "enrolled" and "enrollment" of a given item of property first occurs when the property is first placed on the property books of the taxing jurisdiction in the name of the Taxpayer.

2.5 **"Feedstock"** -- means raw materials or production inputs which are directly used in the manufacture of polymers.

2.6 **Fifty million dollar threshold.** -- Under West Virginia Code §§ 11-6F-2(d) and 3, a Taxpayer is entitled to the special valuation allowed under the Act when at least $50 million of qualified capital addition property has been enrolled in the name of the Taxpayer. The special valuation shall be granted beginning in the tax year when the aggregate total value of enrolled qualified capital addition property enrolled in the name of the Taxpayer has exceeded $50 million and for allowable succeeding years in accordance with West Virginia Code §§ 11-6F-3 and 4 of the Act.

2.7 **"Intangibles."** See Section 6.4.1.3.i.4.1(6) of this rule.

2.8 **"Original cost," as that term is used with reference to a preexisting facility, and not to new investment, or the terms "original cost before a capital addition" or "original cost of a preexisting facility."** --

2.8.1 Under West Virginia Code § 11-6F-2(d), the preexisting manufacturing facility must have a total original cost before the capital addition of at least one hundred million dollars. Manufacturing facilities may in the aggregate carry with them an original cost that is no longer reflective of the current fair market value of the property. It is typical that the fair market value of manufacturing facilities, because of depreciation, inflation, and various market economic forces shall differ in some degree from original cost. It could be that a facility may have an original cost exceeding the $100 million minimum set

forth in West Virginia Code § 11-6F-2(d), but have a fair market value after physical deterioration and economic obsolescence, that is minimal. It could be that a facility could have a market value well in excess of the original cost due to economic factors that would make the construction of a similar facility far more expensive than original cost.

2.8.2 "Original cost," as that term is used with reference to a preexisting facility, and not to new investment, or the terms "original cost before a capital addition" or "original cost of a preexisting facility" means the total, original, undepreciated cost, unadjusted for inflation or deflation, of capitalized property and certain leased property physically in service at a facility immediately prior to the placement of certified capital addition property in service at the facility, excluding property enumerated as excluded under this rule. As a general rule, original cost is the basis to the Taxpayer of the property for federal income tax purposes (prior to any federal adjustments) at the time of the acquisition by the Taxpayer of the property and adjusted by subsequent capital additions or improvements to the property and partial disposition of the property, by reason of sale, exchange or abandonment, etc. Depreciation is not taken into account in determining the original cost of the property. Original cost shall include installation costs, transportation, sales and excise taxes, planning costs, and other costs associated with the acquisition of a given asset to the extent that the costs are capitalized for federal income tax purposes.

2.8.2.1 **Excluded property**

2.8.2.1.a **Airplanes, motor vehicles, non-capitalized property and qualified capital addition property.** -- There shall be excluded from the determination of "original cost" or "original cost before a capital addition" or "original cost of a preexisting facility" the following property whether purchased or leased: Airplanes; motor vehicles licensed by the Division of Motor Vehicles; inventories and non-capitalized property; qualified capitol addition property to be included as part of the certified capital addition property (including construction in progress); and any property acquired by purchase or lease from a related entity or between related entities. The Tax Commissioner may waive the prohibition against related entity acquisitions if the property was acquired from a related entity for its the fair market value and there is no manipulation of the measure of the cost of, or the amount of investment in, qualified capital addition property for the purpose of gaining entitlement to special property valuation under the Act.

2.8.2.1.b For purposes of this definition, the term "non-capitalized property" means property, the cost of which is not required to be capitalized for federal income tax purposes under the Internal Revenue Code or the rules, regulations or policies implemented or promulgated by the United States Internal Revenue Service.

2.8.2.2 **Property no longer in service.** -- There shall be excluded from the determination of "original cost" or "original cost before a capital addition" or "original cost of a preexisting facility" the cost of any property, whether purchased or leased, which has been removed from service, scrapped, or permanently shut down or placed in mothball mode, notwithstanding that the property may remain on the premises, or in the facility or on the facility grounds. Any property sold, no longer owned by the Taxpayer, or removed from the premises or otherwise permanently out of service shall not count toward the measure of original cost.

2.8.2.3 **Residential and entertainment property.** -- Occasionally, manufacturers in West Virginia have seen fit to lease, purchase or construct residential dwellings or housing in West Virginia for the purpose of providing long term or temporary housing for certain management personnel or other company personnel or for visiting dignitaries, company officers or guests of the company. There shall be excluded from the determination of "original cost" or "original cost before a capital addition" or "original cost of a preexisting facility" the cost of any houses, entertainment facilities, guest accommodations, dwellings or similar facilities, whether leased or purchased (constructed or otherwise), without regard to whether the cost of the property is capitalized for federal income tax purposes and without regard to whether the property is leased under lease terms which would otherwise qualify under this rule.

2.8.3 **Original cost and leased property.** -- Leased property shall not typically count toward the measure of original cost to the lessee. However, certain types of leased property shall be counted.

2.8.3.1 **Leases capitalized for federal income tax purposes.** -- Real or tangible personal property still under lease immediately prior to the placement of certified capital addition property in service at the facility may be counted toward the measure of original cost if the lessee is required to treat the leased property as purchased property for federal income tax purposes and the written lease specifically makes the lessee responsible for payment of the property tax on the leased property. The amount of the original cost of the leased property for purposes of the Act is the amount capitalized for federal income tax purposes represented by the property.

2.8.3.2 **Leases of Tangible personal property.** -- Where the preexisting manufacturing facility incorporates leased tangible personal property under a lease that, at the time the lease was entered into had a primary lease term of at least 75% of the useful life of the leased tangible personal property, and where the written lease for that property specifically makes the lessee responsible for payment of the property taxes on the leased property, the leased tangible personal property still under lease at the time

qualified capital addition property is enrolled may be counted toward the measure of original cost of the preexisting facility.

2.8.3.3 **Leases of realty.** -- In the case of leases of real property which at the time the lease was entered into had a primary lease term of at least ten years, and where the written lease for that property specifically makes the lessee responsible for payment of the property taxes on the leased property, the cost of the leased real property still under lease at the time qualified capital addition property is first enrolled in the name of the Taxpayer may be counted toward the measure of original cost of the preexisting facility.

2.8.3.4 The extent to which the cost of leased real or tangible personal property may qualify may be adjusted by the Tax Commissioner, depending on whether the lease payments are reflective of a fair market value lease rate. Only those costs of leased property imposed pursuant to a written lease agreement may qualify to be counted toward original cost.

2.8.3.5 Except for sale and lease back property, the cost of leased property that qualifies to be counted for purposes of determining original cost under the Act is the rent paid for the property prior to the date when any item of qualified capital addition property is enrolled in the name of the Taxpayer over the primary term of the lease or the bygone portions of the property, and any subsequent lease renewals that have been exercised.

2.8.3.6 **Sale and lease back property.** -- In the case of property purchased by a Taxpayer and sold to a leasing company or other entity, and then leased back to the Taxpayer which originally purchased the property (a so called sale and lease back): As with other leases, a sale/lease back lease counts toward the original cost of a preexisting facility if the property meets the criteria set forth in this section for qualification (i.e., the lease is capitalized for federal income tax purposes, or a tangible personal property lease having a primary term of 75% of useful life, or a realty lease having a 10 year or more primary term, and the lessee is required by the written terms of the lease to pay the property tax on the leased property).

2.8.3.7 If the sale/lease back lease otherwise qualifies to be counted toward the measure of original cost of the preexisting facility, the measure of original cost of the sale/lease back property to be counted as part of the cost of the preexisting facility is the original purchase price cost of the property to the Taxpayer prior to the sale of the property to the leasing company or lessor.

2.9 **"Placed in service"** -- Qualified capital addition property becomes a qualified

capital addition to a manufacturing facility which is qualified for special valuation under the Act when the property is placed in service, without regard to the point in time when the property is purchased, physically installed or physically placed in operation. Qualified capital addition property enrolled in the name of the Taxpayer before the $50 million threshold has been exceeded shall not be treated as having been placed in service for purposes of the Act until the $50 million threshold has been exceeded and at least $50 million of the qualified capital addition property has been enrolled in the name of the Taxpayer. Qualified capital addition property in excess of $50 million that is enrolled in the name of the Taxpayer on or after the date of enrollment of property representing the $50 million threshold amount shall be treated as having been placed in service when enrolled in the name of the Taxpayer. Property assessed as construction in progress for purposes of this determination shall be treated as placed in service in the same manner as other qualified capital addition property in accordance with this subsection.

2.10 **"Preexisting facility" or "preexisting manufacturing facility" --** mean a manufacturing facility, as defined in West Virginia Code § 11-6F-2(b), and the attributes thereof at the manufacturing facility (excluding all qualified capital addition property) immediately prior to the enrollment of qualified capital addition property which shall become certified capital addition property when the $50 million threshold is exceeded.

2.11 **"Property tax year" or "tax year" --** means the calendar year following the July first assessment day. The term "tax year" for purposes of the property tax is defined in West Virginia Code § 11-5-3 to mean the calendar year following the July first assessment day, or in the case of a public service business assessed pursuant to West Virginia Code § 11-6-1 et seq., the calendar year beginning on the January first assessment day.

2.12 **"Qualified capital addition property" --** means property not otherwise disqualified or excluded from qualifying as certified capital addition property or as a qualified capital addition to a manufacturing facility under the provisions of the Act or this rule, which may potentially qualify as certified capital addition property and as a qualified capital addition to a manufacturing facility if the $50 million threshold and the other requirements of the Act are ultimately fulfilled by investment in the property and, after the $50 million threshold has been exceeded, qualified capital addition property means certified capital addition property and comprises the qualified capital addition to a manufacturing facility.

2.13 **Related entity.** -- The term "related entity" means:

2.13.1 A corporation, partnership association or trust controlled by the Taxpayer;

2.13.2 An individual corporation, partnership, association or trust that is in control of the Taxpayer;

2.13.3 A corporation, partnership, association or trust controlled by an individual, corporation, partnership, association or trust that is in control of the Taxpayer; or

2.13.4 A member of the same controlled group as the Taxpayer.

2.13.5 For purposes of this rule, "control," with respect to a corporation means ownership, directly or indirectly, of stock possessing fifty percent (50%) or more of the total combined voting power of all classes of the stock of the corporation entitled to vote. "Control," with respect to a trust, means ownership, directly or indirectly, of fifty percent (50%) or more of the beneficial interest in the principal or income of the trust. The ownership of stock in a corporation, of a capital or profits interest in a partnership or association or of a beneficial interest in a trust shall be determined in accordance with the rules for constructive ownership of stock provided in United States Internal Revenue Code § 267(c), as amended, other than paragraph (3) of that section.

2.14 **"Replacement property"** is defined in Section 2.3.1.1.b of this rule.

2.15 **"Statutory effective date" --** means the effective date of West Virginia Code § 11-6F-1 et seq. West Virginia Code § 11-6F-6 states that West Virginia Code § 11-6F-1 et seq. is effective for tax years beginning on and after July 1, 1997. The term "tax year" for purposes of the property tax is defined in West Virginia Code § 11-5-3 to mean the calendar year following the July first assessment day, or in the case of a public service business assessed pursuant to West Virginia Code § 11-6-1 et seq., the calendar year beginning on the January first assessment day.

2.15.1 For Taxpayers other than public service businesses, the provisions of West Virginia Code § 11-6F-1 et seq. are effective for property assessed on July 1, 1997 for the January 1 to December 31, 1998 tax year, and thereafter. Property assessed prior to July 1, 1997 is not subject to the treatment allowed under West Virginia Code § 11-6F-1 et seq. For public service businesses, the provisions of the Act are effective for property assessed on January 1, 1998 for the January 1 to December 31, 1998 tax year and thereafter.

§ 110-6F-3. Application for certification of capital addition property. -- West Virginia Code § 11-6F-4 requires that an application for certification of capital addition property be filed with the Tax Commissioner "on or before the date the property is first required to be

reported on an annual return for ad valorem property tax purposes."

3.1 Every corporation owning a manufacturing facility located in West Virginia (except public service businesses) is required by West Virginia Code § 11-1C-10 to prepare and file an annual property tax return with the Tax Commissioner between July 1st and October 1st each year listing all of its property subject to taxation including, but not limited to, construction in progress.

3.1.1 The year in which the annual return is required to be filed is the calendar year preceding the tax year. The term "tax year" is defined in West Virginia Code § 11-5-3 to mean the calendar year following the July first assessment day, or in the case of a public service business assessed pursuant to West Virginia Code § 11-6-1 et seq, the calendar year beginning on the January first assessment day.

3.2 **Due date.** -- Under West Virginia Code § 11-6F-4, a person seeking to have property designated as certified capital addition property for purposes of the Act, shall make a sworn application to the State Tax Commissioner, on forms prescribed for that purpose by the Tax Commissioner, on or before the date the property is first required to be reported on an annual return for property tax purposes. Application for certification shall be treated as having been timely filed with the Tax Commissioner for purposes of the Act if the application for certification is filed on or before the first day of October of the year in which the annual return is required to be filed to report the property which the Taxpayer seeks to have certified as certified capital addition property. For public service businesses, application for certification shall be treated as having been timely filed with the Tax Commissioner for purposes of the Act if the application for certification is filed on or before the first day of May of the year in which the annual return is required to be filed to report the property which the Taxpayer seeks to have certified as certified capital addition property. Applications shall not be accepted for capital additions to a manufacturing facility enrolled in the name of the Taxpayer before the statutory effective date, i.e., for property enrolled in the name of the Taxpayer before July 1, 1997.

3.2.1 **Applications for certification of multiple party projects located in polymer alliance zones.** -- If qualified capital addition property investment is made in a polymer alliance zone, West Virginia Code § 11-6F-2d allows one or more persons making the qualified capital addition to join in a multiparty project with a person owning or operating a preexisting manufacturing facility: (1) that is located in the polymer alliance zone where the qualified capital addition property is to be located; and (2) that has property in place in the polymer alliance zone having a total original cost before the capital addition of at least one hundred million dollars.

3.2.1.1 The multiple party project may be certified by the Tax Commissioner if the capital addition creates additional production capacity of existing or related products or feedstock or derivative products respecting the preexisting manufacturing facility and if the qualified capital addition property investment otherwise meets the requirements of the Act and this rule.

3.2.1.2 Applicants for multiple party projects to be located in a polymer alliance zone shall make a sworn application to the Tax Commissioner in accordance with West Virginia Code § 11-6F-4 on forms prescribed for that purpose by the Tax Commissioner, on or before the date the property is first required to be reported to the county assessor on an annual return for property tax purposes. Application for certification shall be treated as having been timely filed with the Tax Commissioner for purposes of the Act if the application for certification is filed on or before the first day of October of the year in which the annual return is required to be filed to report the property which the Taxpayers seek to have certified as certified capital addition property.

3.2.1.2.a An application for a multiple party project for qualified capital addition property investment in a polymer alliance zone shall be executed by all proposed participants. It shall specifically state that the participants seek certification of a multiple party project and certified capital investment to be made in a polymer alliance zone. The application shall specifically identify the particular polymer alliance zone in which the investment is to be made. It shall affirm that all participants are:

3.2.1.2.a.1 Manufacturers of polymers;

3.2.1.2.a.2 Manufacturers of the production inputs (i.e. feedstock) for the manufacture of polymers; or

3.2.1.2.a.3 Manufacturers that use polymers as production inputs in the manufacture of derivative products.

3.2.1.2.a.4 No other Taxpayers or persons shall qualify as participants in a multiple party polymer alliance zone project for purposes of the Act.

3.2.1.2.b The application for a multiple party project shall specifically state that one of the proposed participants is a person owning or operating a manufacturing facility that predominantly (1) manufactures polymers; (2) manufactures production inputs (feedstock) for the manufacture of polymers; or (3) manufactures a derivative product which is produced from polymers. The facility must predominantly manufacture one or more of the enumerated products, but need not exclusively manufacture those products. The

application shall specifically state that the preexisting manufacturing facility is (1) located in the polymer alliance zone where the qualified capital addition property is to be located and (2) has a total original cost before the capital addition of at least one hundred million dollars in place in a polymer manufacturing facility in the polymer alliance zone. The application shall specifically identify the person owning or operating that manufacturing facility and shall be executed by that person or a legal representative of that person along with all other proposed participants.

3.2.1.2.c The application for certification of a multiple party project shall specifically state that the proposed qualified capital addition property shall create additional production capacity of existing or related polymer products produced by that manufacturing facility or feedstock or derivative products produced by that manufacturing facility.

3.2.1.2.d The application must describe in detail the investment and business expansion plan, and shall show that the investment shall be integrated with the preexisting manufacturing facility.

3.2.1.2.e Multiple party investments in a polymer alliance zone that are not integrated with the preexisting facility shall not be certified. In order for an investment to be integrated with a preexisting facility, the qualified capital investment property and its operation shall typically be physically, economically and functionally integrated with the preexisting manufacturing facility in accordance with the criteria set forth in this rule for integrated investments.

3.2.1.2.f Only persons or entities that directly make substantial investment in qualified capital addition property shall qualify as project participants in a multiple party polymer alliance zone project for purposes of the Act.

§ 110-6F-4. Polymer alliance zone investment.

4.1 West Virginia Code § 11-6F-2(d) defines the term "qualified capital addition to a manufacturing facility," and sets forth the following specifications relating to persons making investment in qualified capital addition property in a polymer alliance zone.

4.1.1 If the capital addition is made in a polymer alliance zone as designated from time-to-time by executive order of the governor, then the person making the capital addition may for purposes of satisfying the requirements of this subsection join in a multiparty project with a person owning or operating a manufacturing facility that has a total original cost before the capital addition of at least one hundred million dollars if the capital addition

creates additional production capacity of existing or related products or feedstock or derivative products respecting the manufacturing facility.

4.2 The "polymer alliance zone" provision of the Act applies only to the following entities if they have a facility located in a polymer alliance zone.

4.2.1 Manufacturers of polymers;

4.2.2 Manufacturers of the production inputs (i.e. feedstocks) for the manufacture of polymers; and

4.2.3 Manufacturers that use polymers as production inputs for production of derivative products.

4.3 The provisions of the Act relating to polymer alliance zones do not apply to any other manufacturers or persons that may be located in a polymer alliance zone. However, all West Virginia manufacturers that qualify under the Act are subject to the special property tax valuation provisions of the Act without regard to whether they are located in a polymer alliance zone or elsewhere in West Virginia.

4.4 Applications for certification of multiple party projects must meet specific requirements set forth in Subdivision 3.2.1 of this rule.

§ 110-6F-5. The point in time when entitlement to special property tax valuation accrues.

A Taxpayer is entitled to the special valuation allowed under the Act when at least $50 million of qualified capital addition property has been enrolled in the name of the Taxpayer. The special valuation shall be granted for the tax year when the aggregate total value of enrolled qualified capital addition property enrolled in the name of the Taxpayer has exceeded $50 million and for succeeding years in accordance with West Virginia Code §§ 11-6F-3 and 4.

5.1 Qualified capital addition property enrolled in the name of the Taxpayer before the $50 million threshold has been exceeded shall not be treated as having been placed in service for purposes of the Act. When the first $50 million of the qualified capital addition property has been enrolled in the name of the Taxpayer, that $50 million threshold investment in the property is considered to be placed in service on the date of enrollment of the property. Qualified capital addition property in excess of $50 million that is enrolled in the name of the Taxpayer on or after the date of enrollment of property representing the

$50 million threshold amount shall be treated as having been placed in service when enrolled in the name of the Taxpayer.

5.2 The qualified capital addition property as well as the initial $50 million investment in property constitutes a "qualified capital addition to a manufacturing facility" and "certified capital addition property," and shall be valued in accordance with West Virginia Code ' 11-6F-3 beginning in the tax year for which the amount of the original cost of the investment in new qualified capital addition property in place first exceeds $50 million on the July 1 assessment day.

5.3 **Example:**

Construction of a capital addition to an existing eligible manufacturing facility begins on April 1, 1997. The construction shall be accomplished over a period of 24 months. It shall be completed on April 1, 1999, and the capital addition shall be placed in operation on June 1, 1999.

On July 1, 1997, three months of construction have been completed. On July 1, 1998, 15 months of construction have been completed, and more that $50 million of qualified capital addition property is in place.

Construction is completed April 1, 1999. The plant is placed in operation on June 1, 1999, and as of July 1, 1999 is assessed as a completed qualified capital addition to a manufacturing facility for tax year 2000.

5.3.1 The addition is assessed as follows for the tax years 1998, 1999 and 2000:

5.3.1.1 On July 1, 1997, 3 months of construction in progress is enrolled in the name of the Taxpayer with an appraised value equal to the fair market value of the materials in place in the construction. The $50 million threshold has not yet been reached. Therefore, for purposes of the Act, the property is not treated as having been placed in service, and the construction in progress is valued and taxed for the 1998 tax year without applying the special property tax valuation. The 1998 tax year is the January 1 to December 31 calendar year next succeeding the July 1, 1997 assessment date.

5.3.1.2 The Act does not yet apply because the $50 million threshold has not been reached. For the 1998 tax year, the assessed value is 60% of the appraised value. Typically the appraised value of construction in progress is set at the value of the materials in place without any cost of labor component.

5.3.1.3 On July 1, 1998, fifteen months of construction have been completed, and more than $50 million of construction materials have been incorporated into the construction in progress and are assessed on July 1. The $50 million threshold has now been exceeded. The property having a cost of more than $50 million, even though it has not yet been placed into operation, shall be treated as having been placed in service on July 1, 1998 for purposes of the Act. This is the date when the cost of the property enrolled in the name of the Taxpayer attributable to the project exceeds $50 million.

5.3.1.4 The physical placement of property into operation and the placement of property into service for purposes of the Act are not related concepts, and these events do not typically occur simultaneously. The term "placed in service" is defined in Section 2 of this rule. Property is placed into service for purposes of the Act when the criteria set forth in that definition have been satisfied. West Virginia Code § 11-6F-4 states that the certified capital addition property receives special property tax valuation beginning at the point in time when the qualified capital addition property is "placed in service." The Taxpayer's entitlement to special property tax valuation accrues only when qualified capital addition property is "placed in service."

5.3.1.5 For the 1999 tax year (the tax year following July 1, 1998), the assessed value is the appraised value multiplied by 5% multiplied by 60%. Again, for construction in progress, the materials cost is counted in the appraised value, but not the labor cost component.

5.3.1.6 Construction is completed on April 1, 1999. The plant goes into operation on June 1, 1999. The placement of property in service for purposes of the Act bears no relationship to the date when property is placed into operation as a functioning part of the manufacturing facility.

5.3.1.7 On July 1, 1999, the construction has been completed for about 3 months. The qualified capital addition property enrolled for the first time in the name of the Taxpayer on July 1, 1999 shall be treated as having been placed in service immediately upon enrollment because the $50 million threshold was reached on July 1, 1998. New qualified capital addition property enrolled in the name of the Taxpayer after the $50 million threshold has been exceeded is treated as having been placed in service for purposes of the Act when enrolled in the name of the Taxpayer. The plant's appraised value shall now include not only the cost of the materials incorporated into the plant, but also the value of the labor for the construction. Appraised value shall increase significantly for the 2000 tax year (the calendar year after July 1, 1999).

5.3.2 The assessed value is original cost multiplied by 5% multiplied by 60%.

5.3.2.1 The cost layers created by the property enrolled in the name of the Taxpayer on July 1, 1997 and on July 1, 1998 shall have special property tax valuation treatment for the tax years 1999 through 2008 inclusive (ten years).

5.3.2.2 The value of property enrolled in the name of the Taxpayer on July 1, 1997 was below the $50 million threshold. Therefore, the qualified capital addition property enrolled in the name of the Taxpayer in that year is not treated as having been placed in service in the 1998 tax year (the next calendar year after July 1, 1997). The $50 million threshold is exceeded on July 1, 1998. The investment that makes up the $50 million amount is composed of the investment in the property enrolled in the name of the Taxpayer on July 1, 1997, as well as the investment in property enrolled in the name of the Taxpayer on July 1, 1998. Thus, the property enrolled in the name of the Taxpayer as of July 1, 1997 is treated as having been placed in service for purposes of the Act on July 1, 1998, along with the remaining investment in property comprising the $50 million amount that was enrolled in the name of the Taxpayer on July 1, 1998. This is why the property enrolled in the name of the Taxpayer on both assessment days, July 1, 1997 and July 1, 1998, is treated as placed in service on July 1, 1998. The July 1, 1998 assessment day is the assessment day for the tax year beginning on January 1, 1999. This is why the property enrolled in the name of the Taxpayer on July 1, 1997 and the property enrolled in the name of the Taxpayer on July 1, 1998 shall receive special property tax valuation under the Act beginning in tax year 1999 and ending in tax year 2008.

5.3.2.3 The cost layer created by the property enrolled in the name of the Taxpayer on July 1, 1999 shall have special property tax valuation treatment for the tax years 2000 through 2009 (ten years). The special property tax valuation treatment for both layers shall be concurrent for the years 2000 to 2008.

§ 110-6F-6. Period of time over which property is placed in service.

6.1 West Virginia Code § 11-6F-4 requires that an application for certification of capital addition property be filed with the Tax Commissioner "on or before the date the property is first required to be reported on an annual return for ad valorem property tax purposes."

6.2 A Taxpayer may apply for certification of a project investment that is to be placed in service or phased in over a period of years at a total cost of more than $50 million and comply with West Virginia Code § 11-6F-4 if the application for certification is filed before the first items of investment property (either as a completed facility or as

construction in progress) are required to be reported on a property tax return.

6.3 Certified capital addition property shall be placed in service as part of a defined plan for an integrated capital addition to a manufacturing facility over a definite and limited period of time based upon the Taxpayer's plan for the expansion. It may be that a Taxpayer shall undertake a development where the investment shall be made over a number of years for a single expansion. There is no set maximum time limitation period for the placement of the integrated investment property in service.

6.4 In some cases expansion may take place in phases where one portion of the plant expansion (such as a production line or unit) may be placed in operation, and other phases of the expansion shall then be later placed into operation as they are built. The Tax Commissioner shall certify multi-phase projects if the project phases can be reasonably included as components of a plan for an integrated capital addition to a manufacturing facility. However, if there is a substantial expanse of time or delay (either planned or unplanned) between the placement of one phase into operation, and the commencement of construction or operation of a succeeding phase, the Tax Commissioner may determine that the expansions resulting from those purported phased investments are not part of a plan for integrated capital additions to a manufacturing facility, but instead are a series of discrete non-integrated investments. A time gap or delay of more than 1 year shall be considered substantial.

6.4.1 If investments are determined to be discrete non-integrated investments, the property acquired with the investments shall qualify separately for special property valuation under the Act. Each non-integrated investment shall independently meet the $50 million investment threshold requirement.

6.4.2 In the case of integrated multi-phase investments, the total qualified investment combining all integrated phases of the development shall typically be included in the measure of investment in qualified capital addition property for determining whether it meets the $50 million investment threshold requirement and, once the threshold had been exceeded, toward the amount of the certified capital addition.

6.5 **Plan for an integrated capital addition** – Qualified capital addition property shall be placed in service as part of a discrete, defined plan for an integrated capital addition to a manufacturing facility over a definite and limited period of time based upon the Taxpayer's plan for the expansion. The property may be placed in service over a period of less than one year, or more than one year or in phases. Phased investments or phased in investments shall be made pursuant to a plan for an integrated capital addition where one or more portions of the plant expansion (such as a production line or unit) may be placed in

operation, and other phases of the expansion shall then be later placed into operation in due course as they are concurrently or consecutively constructed or installed. Although integrated phased investments that take more than one year to complete are multiple year investments, other multiple year investments may not be phased investments in that the investment in non-phased multiple year integrated investments are enrolled in the name of the Taxpayer year by year as construction in progress, and the qualified capital addition property goes into actual operation at one point in time, rather than in phases. A so called "turn key" project, where the entire operation substantially commences upon the completion of construction of the facility, would constitute a capital addition to a manufacturing facility resulting from a multiple year non-phased integrated investment.

6.5.1 **Integration between qualified capital addition property and preexisting facilities.** -- Although physical integration between the preexisting facility and the qualified capital addition property (to the extent that the qualified capital addition property must be located within two miles of the preexisting facility) is required in West Virginia Code § 11-6F-2(d), the extent to which qualified capital addition property must be economically or functionally integrated with the preexisting facility shall vary on a case by case basis.

6.5.1.2 It is possible that qualified capital addition property may consist of an entirely new plant, operation or process which manufactures an entirely new product or product line in such a way that the qualified capital addition property may not be in any way integrated with, or related to, the preexisting facility or its operations, except for the fact that it is owned by the same person that owns the preexisting facility and it is located within two miles of the preexisting facility. In that case, the property may qualify for special property tax valuation under the Act if the property is otherwise qualified, and if the investment plan itself constitutes a discrete, definite plan for an integrated investment in qualified capital addition property.

6.5.1.3 **Criteria indicating the existence of a plan for an integrated capital addition to a manufacturing facility.** -- The following criteria relating to a proposed capital addition to a manufacturing facility indicate the possible existence of a plan for an integrated capital addition, but no single factor or combination of factors is dispositive of the issue of integration.

6.5.1.3.a Evidence that an investment is to be made for the accomplishment of a single economic expansion or development, and that the purchase of any major property component or any major service component of the development shall not and would not be made unless investment in the remaining major components are also made;

6.5.1.3.b The existence, for a substantial time prior to the enrollment of any qualified capital addition property, of a written plan for the capital addition showing: projected amounts of investment to be placed in service, a detailed schedule for construction and commencement of operations (either in phases or otherwise) and a detailed set of technical engineering and construction plans for the expansion;

6.5.1.3.c The existence, for a substantial time prior to the enrollment of any proposed qualified capital addition property, of minutes of the Board of Directors of the Taxpayer showing the presentation of a proposal for the planned capital addition, deliberations of the Board of Directors regarding the proposed capital addition and approval of the plan by the Board;

6.5.1.3.d The presentation of a proposal for or demonstration of the plan for the capital addition to the shareholders or owners of the Taxpayer a substantial time prior to the enrollment of any proposed qualified capital addition property;

6.5.1.3.e Minutes of the Board of Directors showing authorization of expenditures of the Taxpayer for the capital addition;

6.5.1.3.f Evidence of the encumbrance of funds in the accounting records of the Taxpayer for the capital addition;

6.5.1.3.g Submission of filings, applications and documentation relating to the proposed project with Federal and State agencies such as the Federal Energy Regulatory Commission, the Securities Exchange Commission, or with air, water and solid waste permitting agencies and similar governmental agencies a substantial time prior to the enrollment of any proposed qualified capital addition property;

6.5.1.3.h The preparation and submission of applications for financing with public or private sources of financial resources, the issuance of securities for the financing of the proposed capital addition, and the incurring of debt and other obligations for the financing of the project a substantial time prior to the enrollment of any proposed qualified capital addition property; and

6.5.1.3.i **Phased investments.** -- In the case of phased investments, physical, engineering, economic and functional integration of the qualified capital addition property placed in service shall typically be shown for all phases of the investment. The investment phases shall be integrated with each other and typically shall be integrated with the preexisting facility.

6.5.1.3.i.1 **Physical integration** occurs where the qualified capital addition property is located in or on the premises of a preexisting facility or in near proximity to, or incorporated as part of, a preexisting production unit of the preexisting facility.

6.5.1.3.i.2 **Engineering integration** occurs where the qualified capital addition property is deliberately designed to operate in coordination with other parts of the preexisting production machinery and apparatus at the facility so as to improve productivity, quality control or overall capacity of the manufacturing operation at the facility.

6.5.1.3.i.3 **Economic integration** occurs where the capital addition is designed to enhance the overall economic efficiency of the preexisting manufacturing facility by either decreasing costs per unit of production, or increasing net revenues.

6.5.1.3.i.4 **Factors indicating functional integration.** - - The determination of whether or not the operations resulting from phased investments and preexisting facilities are functionally integrated (both between phases and between the preexisting facility and the property represented by the phased investment) turns on the facts and circumstances of the case. Several factors may evidence that the operations are functionally integrated. A non-exclusive list of these factors is found below. Generally, several functionally integrating factors shall exist in a given business, although functional integration may exist as a result of few factors or even one factor, if the factor or factors involved are particularly significant. In determining whether functional integration exists, factors should not be examined in isolation. Instead, it should be determined whether the factors which are present, in combination, result in functional integration between phased investment property and the preexisting facility. In addition, the presence or absence of any one factor or any particular factors is not necessarily determinative as to whether a functional integration exists, although absence of all of the factors described in this subsection shall generally result in a finding that functional integration does not exist.

6.5.1.3.i.4.1 **Factors.** – A non-exclusive listing of factors to be considered in determining whether business segments are functionally integrated include the following:

(1) Functional integration may be indicated where the capital addition, in conjunction with other preexisting assets at the manufacturing facility is operated to send, receive, exchange or transfer products, materials or goods between the qualified capital addition property and production, storage, receiving, or shipping units of the preexisting

facility. The greater the quantity of these exchanges as a percentage of overall exchanges, the more significant this factor becomes;

(2) Functional integration is indicated where there is common management of both the qualified capital addition property and the preexisting facility;

(3) Functional integration is indicated where there is a common use or transfer of technical information, know-how or research and development on a significant scale between operations of the preexisting facility and operations engaged in with the qualified capital addition property;

(4) A distribution system common to operations represented by property acquired in investment phases and to one or more production units of the preexisting facility for either production inputs or production outputs is indicative of functional integration;

(5) Evidence of functional integration may be found in use of a common distribution system under which inventory control and accounting, storage, trafficking and transportation are controlled through a common network for both the capital addition and the preexisting facility;

(6) Evidence of functional integration may be indicated by common purchasing or supply of substantial quantities of products, services, intangibles, or the like from the same source for both the preexisting facility and the qualified capital addition property, where the supply results in a significant economy of scale, or where the products, services, intangibles, or the like are not readily available from other sources and are particularly important to each component of the Taxpayer's business, both the preexisting facility and the qualified capital addition property. For purposes of this provision the term "intangibles" means and includes, but is not limited to, patents, copyrights, formulas, processes, trade secrets, trademarks, and similar property;

(7) Centralized management may indicate functional integration and exists when directors, officers or management employees jointly participate in management decisions which significantly affect the operations of the property resulting from phased capital investment and the operations of the preexisting facility. The transfer of officers or management employees between business segments may also provide evidence of centralization of management;

(7a) The mere presence of centralized management is not sufficient to support a finding that the operations relating to the property acquired through phased investment and of the preexisting facility are functionally integrated. Only those centralized

management activities which contribute to the integration of the operations under consideration constitute a functionally integrating factor. Centralized efforts to fulfill investment stewardship responsibilities, such as the implementation of a uniform system of internal controls, or regulatory reporting requirements, such as the establishment of centralized information processing, are not determinative for this purpose;

(7b) When operations resulting from the phased investment in qualified capital addition property and operations of the preexisting facility are carried on in the same general line of business or constitute steps in a vertically integrated enterprise, the centralized management is more significant as a factor indicative of functional integration than in other business contexts because of the opportunity the respective operations have in making use through such central management of readily transferable knowledge and expertise between operations, and developing coordination between the operations;

(8) **Other factors.** -- Functional integration of business segments are generally not be evidenced by such factors (alone or in combination with other factors described by this subparagraph) as common financing, advertising, labor relations, warehousing (in the absence of a central distribution system), pension plans, insurance, and personnel recruitment. However, these factors do not clearly demonstrate that functional integration exists, they may, in combination with the factors described, demonstrate sufficient additional evidence of functional integration to warrant a finding that functional integration exists.

6.5.1.3.i.4.2 **Factors accorded little weight.** -- Factors such as common legal services, accounting, tax administration, and financial reporting shall generally be accorded little weight in the determination of whether operations relating from property acquired through phased investment and preexisting facilities are functionally integrated.

6.5.1.3.i.4.3 **The presence of functional integration shall be presumptively shown by the presence of the following:**

(1) **Same general line of business:** There is a strong presumption that the property acquired through phased investment and the preexisting facility are functionally integrated when the activities engaged in with the qualified capital addition property and the preexisting facility are in the same general line of business.

(2) **Steps in a vertical process:** The operations resulting from use of the property acquired through phased investments and the operations of the preexisting facility are functionally integrated when the qualified capital addition property and preexisting facility

are used in different steps in a vertically structured enterprise. For example, a corporation which explores for and mines copper ores; concentrates, smelts and refines the copper ores and fabricates the refined copper into consumer products and distributes these products and is engaged in a vertically integrated and functionally integrated business, regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the corporation's executive offices.

6.5.1.3.i.4.4 Phased investments in which qualified capital addition property placed in operation is not used either in the same general line of business as the other property attributable to other phases or in steps in a vertical process, are presumptively non-integrated investments absent a determination that the respective segments are functionally integrated.

6.5.1.3.i.4.5 In the event that one phase of a capital addition is functionally integrated with a second phase, and the second phase is functionally integrated with a third phase, the first, second and third phases constitute functionally integrated phases notwithstanding the fact that the first and third phases are not functionally integrated with each other. The preceding sentence shall not apply where the second phase's functional integration with one phase is not substantial viewed from the perspective of either of the remaining phases. All three phases, in turn, shall be treated as functionally integrated with the preexisting facility if any one of the functionally integrated phases is functionally integrated with the preexisting facility.

6.5.1.3.i.4.6 Where the Taxpayer asserts that property acquired through phased investment and the preexisting facility are functionally integrated, the Taxpayer has the burden of proof. Failure by the Taxpayer to produce requested evidence which lies within the control of the Taxpayer gives rise to a presumption that the evidence would be unfavorable if provided.

§ 110-6F-7. Period of time over which special property tax valuation applies.

West Virginia Code § 11-6F-4 states that the certified capital addition property receives special property tax valuation for a period of 10 years subsequent to the placement of the qualified capital addition property in service unless it is sooner removed from service or operations cease.

7.1 Qualified capital addition property enrolled in the name of the Taxpayer before the $50 million threshold has been exceeded shall not be treated as having been placed in service for purposes of the Act until the $50 million threshold has been exceeded. Property

represented by the $50 million initial investment amount shall be treated as having been placed in service for purposes of the Act on the next assessment day (July 1) after the $50 million threshold is exceeded without regard to the year when the property may have been enrolled in the name of the Taxpayer, and so shall receive the special property tax valuation beginning with the tax year commencing on the next January 1 after the July 1 assessment date. Qualified capital addition property enrolled in the name of the Taxpayer after enrollment of the first $50 million of qualified capital addition property shall be treated as having been placed in service when enrolled in the name of the Taxpayer. The tax year is the calendar year following the July first assessment day.

7.2 The Taxpayer is entitled to the special property tax valuation allowed under the Act only when more than $50 million of qualified capital addition property has been placed on the property tax books of the taxing jurisdiction. The initial $50 million of qualified capital addition property and all qualified capital addition property placed on the property tax books after the $50 million threshold has been exceeded shall constitute a "qualified capital addition to a manufacturing facility" and "certified capital addition property," and the ten year valuation treatment shall then begin for that property in the tax year for which it is assessed on the next assessment day after the $50 million threshold is exceeded.

7.3 For qualified capital addition property placed in service after the $50 million threshold has been exceeded which takes more than one tax year to construct, and for qualified capital addition property placed in service after the $50 million threshold has been exceeded that is under construction in such a way that it is caught in a so called "straddle" where some of the qualified capital addition property is assessed on July 1 of one year, and the remainder of the qualified capital addition property is assessed on July 1 of the next year, the mandated valuation shall be available for each portion of the qualified capital addition property for ten years beginning in the tax year for which each portion was first assessed. This creates a layered, year by year entitlement to the special valuation under the Act for property represented by each year's investment.

7.4 **For example:**

7.4.1 The $50 million threshold is exceeded on or before the July 1 assessment day for tax year 1. Part of the remaining qualified capital addition property is placed in service on or before the July 1 assessment day for tax year two, and part on or before the July 1 assessment day for tax year three.

7.4.2 The initial $50 million of qualified capital addition property and the qualified capital addition property in excess of $50 million placed in service for tax year 1 shall have the special valuation under the Act for tax years 1 through 10, inclusive. The

property placed in service for tax year 2 shall have the special valuation under the Act for tax years 2 through 11, inclusive. The property placed in service for tax year 3 shall have the special valuation under the Act for tax years 3 through 12, inclusive.

§ 110-6F-8. Computation of tax.

8.1 West Virginia Code § 11-6F-2(d) defines the term "qualified capital addition to a manufacturing facility" as all real property and personal property, the combined original cost of all of the property which exceeds fifty million dollars to be constructed, located or installed at or within two miles of a manufacturing facility owned or operated by the person making the capital addition that has a total original cost before the capital addition of at least one hundred million dollars.

8.2 The tax is computed by valuing the qualified capital addition to a manufacturing facility at 5% of its total original cost, and then applying the 60% West Virginia assessment ratio, and then multiplying the result by the tax rate for the local taxing jurisdiction.

8.3 **Illustration**: If a $300 million investment were made in 1997 by a qualified entity with $100 million or more of original cost investment in place in West Virginia, and if the investment in new qualified capital addition property otherwise qualified for special valuation under the Act, the tax liability would be calculated as follows:

Property with an original cost of $300 million would be valued at 5% of original cost for property tax purposes.

$300 million X 5% = $15 million salvage value

$15 million X 60% assessment ratio = $9 million assessed value

The 1997 property tax rate for class three property in the particular local taxing jurisdiction shall be hypothetically assumed to be 2.0732%.

$9 million X 2.0732% tax rate = $186,588 Annual Tax on the $300 Million Capital Addition Property

ANALYSIS OF PROPOSED LEGISLATIVE RULES

Agency: State Tax Commission

Subject: Property Tax Valuation of Certain Manufacturing Property, 110CSR6F

PERTINENT DATES

Filed for public comment: June 2, 1998
Public comment period ended: July 2, 1998
Filed following public comment period: July 21, 1998
Filed LRMRC: July 21, 1998
Filed as emergency:
Fiscal Impact: None

ABSTRACT

The proposed rule is new. The following is a section by section synopsis of the proposed rule.

Section 1 is the standard general section, setting forth the scope, authority, filing date and effective date of the proposed rule.

Section 2 defines terms.

Section 3 relates to application for certification of capital addition property. It basically sets forth the Code provisions regarding the due dates for applications.

This section provides that the Commissioner may certify a multiple party project in polymer alliance zones, if the capital addition creates additional production capacity of existing or related products or feedstock or derivative products respecting the preexisting manufacturing facility and the investment meets other statutory requirements. It specifies information which must be included in the application.

Section 4 relates to polymer alliance zone investment. It sets forth those entities to which the Act applies.

Section 5 relates to the point in time when the entitlement to the special property tax valuation accrues. The entitlement occurs when at least $50 million of qualified capital addition property has been enrolled in the name of the taxpayer.

Section 6 relates to the period of time over which property is placed in service. It allows the Tax Commissioner to certify multi-phase projects where the expansions relating from the phased investments are part of a plan for integrated capital additions to a manufacturing facility and not a series of discrete non-integrated investments.

This section also sets forth criteria that indicates the existence of a plan for an integrated capital addition.

Section 7 relates to determining when the 10 year period over which the special property tax evaluation applies begins and ends.

Section 8 provides that the tax is computed by valuing the qualified capital addition to a manufacturing facility at 5% of its total original cost and then applying the 60% West Virginia assessment ratio and then multiplying the result by the tax rate for the local taxing jurisdiction.

Section 9 is an unnecessary severability section.

AUTHORITY

Statutory authority: W.Va. Code, §11-6F-5, which provides as follows:

> The state tax commissioner shall propose rules for promulgation in accordance with article three, chapter twenty-nine-a of this code for the administration of this article as may be necessary to implement the provisions of this article: *Provided,* That the state tax commissioner may promulgate emergency rules to implement the provisions of this article.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

Counsel has two minor technical modifications to suggest.

WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

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December 16, 1998

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mark Morton
State Tax Commission
Capitol Complex
Building 1, Room 400-W

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Property Tax Valuation of Certain Manufacturing Property, 110CSR6F**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
   (a) as originally filed ____
   (b) as modified by the agency ✓

2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached. ____

3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached. ____

4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached. ____