

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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FILED
1992 APR 15 AM 8 51
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: STATE TAX DIVISION TITLE NUMBER: 110

AMENDMENT TO AN EXISTING RULE: YES X, NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 16

TITLE OF RULE BEING AMENDED: BINGO RULES AND REGULATIONS

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

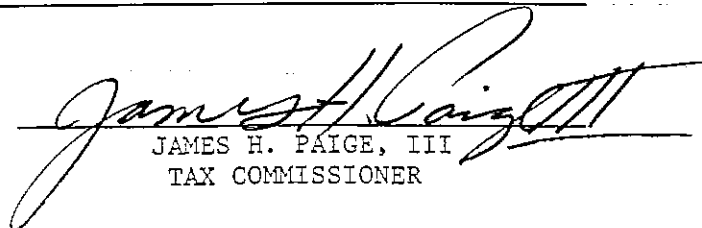
TITLE OF RULE BEING PROPOSED:

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) S.B. 1

SECTION 64-7-6(ii), PASSED ON MARCH 14, 1992

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: APRIL 15, 1992


JAMES H. PAIGE, III
TAX COMMISSIONER

5.00



State of West Virginia
Department of Tax and Revenue

Charleston 25305

FILED

1992 APR 15 AM 8 51

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
JAMES H. PAIGE III
SECRETARY

GASTON CAPERTON
GOVERNOR

CONSENT TO FILE RULE

April 10, 1992

To Whom It May Concern:

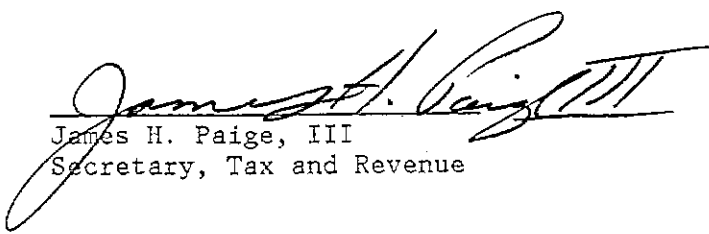
Title of Rule: Bingo Rules And Regulations

Title Number: 110

Series Number: 16

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

Signed this 10th day of April, 1992.


James H. Paige, III
Secretary, Tax and Revenue

WEST VIRGINIA LEGISLATIVE REGULATIONS
DEPARTMENT OF TAX AND REVENUE
TITLE 110
SERIES 16
APRIL 15, 1992

FILED
1992 APR 15 AM 8:51
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

BINGO RULES AND REGULATIONS

§ 110-16-1. General.

1.1 **Scope.** - The West Virginia Bingo law allows bingo games to be lawfully operated by licensed qualified charitable or public service organizations under certain specified restrictions and conditions. The purpose of these emergency legislative regulations is to provide the clarification and guidance necessary for lawful implementation and application of the so-called "Bingo Act".

1.2 **Authority.** - These legislative regulations are issued under the authority of West Virginia Code §§ 47-20-23, 11-10-5 and 29A-3-1 et seq.

1.3 **Filing Date.** - April 15, 1992.

1.4 **Effective Date.** - April 15, 1992.

§ 110-16-2. Definitions.

2.1 When used in these regulations:

2.1.1 "Act" means the Bingo Act being Article twenty (20), Chapter forty-seven (47) of the West Virginia Code.

2.1.2 "Bingo" means the game wherein participants pay consideration for the use of one or more cards bearing several rows of numbers or other designations not two (2) of which cards played in any one (1) game contain the same sequence or pattern. When the game commences, numbers are selected by chance, one (1) by one (1), and announced. The players cover or mark those numbers announced as they appear on the card or cards which they are using. The player who first announces that he has covered a predetermined sequence or pattern which had been preannounced for that game is, upon verification of such, declared the winner of that game.

2.1.2.1 Clarification of the term "consideration". - For the purposes of these regulations, the term consideration shall mean more than five cents (5¢). It should also be noted that no other fees may be charged in conjunction with the fee for the use of the cards if the organization intends to play bingo without a license under this exception.

2.1.2.1.a Example 1. - X society plays bingo and charges two cents (2¢) per card. There is no door fee. Therefore, X society does not need to obtain a bingo license.

2.1.2.1.b Example 2. - Y organization plays bingo and charges one cent (1¢) per card. The door fee is one dollars (\$1.00). Y organization must obtain a bingo license.

2.1.2.2 Limits on prizes awarded under this exception. - If an individual, group or association plans to play bingo without a license under the exception noted in Section 2.1(b)(1), the prizes it awards for each game may not exceed ten dollars (\$10.00) in cash or merchandise.

2.1.2.2.a Example 1. - X family has a reunion every year at which bingo is played. No consideration is charged for the bingo cards and no door fee is charged. The prize for each game is an ice cream gift certificate worth five dollars (\$5.00). X family does not need to obtain a license to play bingo.

2.1.3 "Bingo Card" means a card bearing numbers or other designations, five or more in one line.

2.1.4 "Bingo Occasion" or "Occasion" means a single gathering or session at which a series of one or more successive bingo games are played. During such a series, only one game at a time may be played.

2.1.5 "Charitable or Public Service Activity or Endeavor" means any bona fide activity or endeavor which directly benefits a number of people by:

2.1.5.1 assisting them to establish themselves in life as contributing members of society through education or religion; or

2.1.5.2 relieving them from disease, distress, suffering, constraint, or the effects of poverty; or

2.1.5.3 increasing their comprehension of and devotion to the principles upon which this nation was founded and to the principles of good citizenship; or

2.1.5.4 making them aware of or educating them about issues of public concern so long as the activity or endeavor is not aimed at influencing legislation or supporting or participating in the campaign of any candidate for public office; or

2.1.5.5 by lessening the burdens borne by government or voluntarily supporting, augmenting or supplementing services which government would normally render to the people; or

2.1.5.6 providing or supporting nonprofit community activities for youth, senior citizens or the disabled; or

2.1.5.7 providing or supporting nonprofit cultural or artistic activities.

2.1.5.1 Occasionally questions will arise as to whether a particular activity is a "charitable or public service activity or endeavor."

The above criteria should provide some guidance. For further reference and explanation see Appendix A.

2.1.6 "Charitable or public service organization" means a bona fide, nonprofit, tax exempt organization which is either benevolent, educational, philanthropic, humane, patriotic, civic, religious, fraternal or eleemosynary. These organizations must obtain an I.R.C. § 501 tax exempt status determination letter from the Internal Revenue Service finding that they are exempt from the federal income taxes under section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code of 1954, as amended. However, organizations which are subdivisions of the federal, state and local governments do not need to obtain an I.R.C. § 501 tax exempt status determination letter from the Internal Revenue Service. "Charitable or public service organizations" also includes volunteer fire departments, rescue units or other similar volunteer community service organizations. These organizations do not need to obtain an I.R.C. Section 501 tax exempt status determination letter from the Internal Revenue Service. The term "charitable or public service organization" does not include social or political organizations.

2.1.6.1 Test for determining tax exempt status. - In every instance, charitable organizations wishing to obtain a bingo license must file with their application a copy of their current determination letter from the Internal Revenue Service stating that the organization is exempt from taxes under certain Internal Revenue Code provisions. Requirements for each tax exempt status are set forth below:

2.1.6.1.a I.R.C. Section 501(c)(3). - This section exempts from federal taxation corporations, community chests, funds or foundations which are organized and operated only for:

- 2.1.6.1.a.1 religious purposes,
- 2.1.6.1.a.2 charitable purposes,
- 2.1.6.1.a.3 scientific purposes,
- 2.1.6.1.a.4 testing for public safety purposes,
- 2.1.6.1.a.5 literary or educational purposes,
- 2.1.6.1.a.6 the fostering of national or international amateur sports competition (no part of these organizations activities can involve the provision of athletic equipment or facilities), or
- 2.1.6.1.a.7 the prevention of cruelty to children or animals.

2.1.6.1.b Additionally, for an organization to be considered tax exempt under this section no portion of its net earnings can be given to or benefit any private shareholder or individual; no substantial propagandizing can be carried on; no attempts to influence legislation can be carried on; and no participation or intervention in political campaigns for candidates can be maintained.

2.1.6.1.c I.R.C. Section 501(c)(4). - This section exempts from federal taxation nonprofit civic leagues or organizations operated solely for the promotion of social welfare. It also exempts local employee association in which:

2.1.6.1.c.a membership is limited to employees of a designated person in a particular municipality, and

2.1.6.1.c.b all net earnings are given or used solely for charitable, educational or recreational purposes.

2.1.6.1.d I.R.C. Section 501(c)(8). - This section exempts from federal taxation fraternal beneficiary societies that operate under the lodge system (parent organization which charters local branches), or societies operating for the sole benefit of members of a lodge system fraternity. These organizations must also provide for the payment of benefits (life, sick, accident or other) to the members or their dependents.

2.1.6.1.e I.R.C. Section 501(c)(10). - This section exempts from federal taxation domestic fraternal societies that operate under the lodge system, do not pay benefits and devote their net earnings solely to charitable, religious, scientific, literary, educational and fraternal purposes.

2.1.6.1.f I.R.C. Section 501(c)(19). - This section exempts from federal taxation organizations, auxiliary units, trusts of foundations for war veterans. These must be organized in the United States, and no part of their net earnings may benefit any shareholder or individual. Seventy-five percent (75%) of the members must be war veterans and substantially all of the other members must be veterans, cadets, or spouses, widowers or widows of war veterans.

2.1.6.1.g I.R.C. Section 501(d). - This section exempts from federal taxation religious or apostolic associations if they have a common treasury. These associations may engage in business which commonly benefits all members if the members include their share as gross income on their income tax returns. These amounts are to be considered dividends received.

2.1.6.2 For further reference and explanation see Appendix B.

2.1.7 "Commissioner" means the West Virginia State Tax Commissioner or his duly appointed representative except as otherwise required by law.

2.1.8 "Concession" means any stand, booth, cart, counter or other facility, whether stationary or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other tobacco products, newspapers, souvenirs or any other items are sold to patrons by an individual or individuals operating the concession. In no case is the sale or the consumption of alcoholic beverages, beer or nonintoxicating beer permitted in any area where bingo is being played.

2.1.8.1 Clarification of the term "Area". - For illustrative purposes, several examples will be set forth to help in the determination of what constitutes "an area where bingo is being played."

2.1.8.1.a Example 1. - Organization X is holding a bingo occasion in their organization headquarters' large meeting room. The lounge next to this meeting room contains a bar. This bar is not considered to be in an "area where bingo is being played," and alcoholic beverages, beer and nonintoxicating beer may be sold and consumed in the lounge. But, no alcoholic beverages, beer or nonintoxicating beer may be taken into the bingo area from the lounge.

2.1.8.1.b Example 2. - Organization Y is holding a open air street fair at which they plan to play bingo and sell alcoholic beverages, beer and nonintoxicating beer. These beverages may not be sold at the tables where bingo games are being conducted, and may not be consumed by persons at the tables or by the operators of bingo games.

2.1.8.1.c Example 3. - Organization Z is sponsoring a picnic where bingo is to be played. The organization sets up a tent to cover and contain the gaming space. This covered space thus constitutes the "area where bingo is being played," and alcoholic beverages, beer and nonintoxicating beer may not be sold or consumed within this space.

2.1.9 "Conduct" means to direct the actual playing of a bingo game by activities including, but not limited to, handing out bingo cards, collecting fees, drawing the numbers, announcing the numbers, posting the numbers, verifying winners and awarding prizes.

2.1.10 "Expend net proceeds for charitable or public service purposes" means to devote the net proceeds of a bingo occasion or occasions to a qualified recipient organization.

2.1.10.1 Clarification of the term net proceeds. - As used in these regulations, net proceeds shall be the gross receipts (i.e. all moneys connected with participation in bingo games, the sale of supplies and other miscellaneous receipts) from all bingo occasions held during a license period minus the reasonable, necessary and actual expenses. Expenses of holding the game may not exceed ten percent (10%) of the gross receipts collected during the entire license period, and expenses for prizes may not exceed twenty-five percent (25%) of the gross receipts collected during the entire license period or one hundred thousand dollars (\$100,000), whichever is less.

2.1.10.2 Clarification of the term qualified recipient organization. - As used in these regulations, qualified recipient organizations are charitable or public service organizations (See Section 2.1.6, which are organized and function solely to benefit people by charitable or public service activities or endeavors. (See Section 2.1.5.)

2.1.11 "Licensee" means any organization or association granted an annual, limited occasion or State Fair bingo license.

2.1.12 "Person" means any individual, association, society, incorporated or unincorporated organization, firm, partnership or other nongovernmental entity or institution.

2.1.13 All other terms defined in the Act have the same meaning when used in these regulations.

§ 110-16-3. Bingo operations.

3.1 The following rules are imposed upon licensees for the conduct of a bingo occasion.

3.1.1 Persons may not solicit gifts or donations during the conduct of a bingo occasion.

3.1.2 No games of chance other than bingo and charitable raffles authorized in W. Va. Code article 47-21 may be conducted or allowed at any bingo occasion.

3.1.3 Bingo cards must have bingo numbers printed only on one side.

3.1.4 No push out bingo cards may be used.

3.1.5 Bingo cards may not be switched during bingo games being called.

3.1.6 Cards may not be transferred between players.

3.1.7 Bingo workers and operators may not play in games of bingo in which they are working or assisting.

3.1.8 The combinations required to win a game must be clearly announced before each game is begun.

3.1.9 No checks or money orders may be accepted in payment for a bingo game.

3.1.10 No checks may be cashed out of bingo funds.

3.1.11 Any players may request a verification of the numbers drawn at the time a winner is determined.

3.1.12 The numbers appearing on the winning card must be verified at the time that the winner is determined.

3.1.13 If more than one player is verified a winner on the call of the same number, the designated prize shall be divided equally to the nearest dollar. If the prize cannot be divided, substitute prizes may be given but, the value of the sum of the substitute prizes shall not exceed the value of the original prize.

3.1.14 Every player must be given an equal opportunity to win.

§ 110-16-4. Licensing.

4.1 Who may hold bingo games.

4.1.1 Any charitable or public service organization, as defined in Section 2.1.6, may hold bingo games under a valid license if they have been in existence in this state for two (2) years prior to their filing for a bingo license.

4.1.2 If the applicant is a charitable organization it must have an I.R.C. Section 501 determination letter before it may file for a bingo license.

4.1.3 Before any organization may hold a bingo game, the organization must register with the Secretary of State under the Solicitation of Charitable Funds Act. (See Section 30).

4.2 Application for bingo license.

4.2.1 Application is to be made to the tax commissioner on the provided form.

4.2.2 Filing of applications.

4.2.2.1 These applications must be filed with the state tax commissioner. "Filing" means that the complete application is delivered to the West Virginia State Tax Department, Division of Excise and License Tax, P. O. Box 2666, Charleston, West Virginia, by regular mail, certified mail or in-person delivery. The filing date of an application is the date of its receipt at the place designated by the tax commissioner.

4.2.2.2 Any application which is not complete, does not have all required documentation or does not have the appropriate license fee attached will not be considered "filed".

4.2.2.3 Filing must be made at least sixty (60) days before the date specified in the application for the holding of the first bingo occasion. If the filing is not made at least sixty (60) days prior to the date scheduled for the first bingo game, the license will be automatically denied. If the application is not denied within thirty (30) days after receipt, the application is considered approved. Within five (5) days after approval the commissioner shall send the applicant its license.

4.2.2.4 Transition rule. - If the application is filed any time between August 15, 1981 and February 15, 1982, the application for annual and limited licenses must be filed at least ninety (90) days before the date specified in the application for the holding of the first bingo occasion. If the filing is not made at least ninety (90) days prior to the date scheduled for the first bingo game, the license will be automatically denied. In the case of a State Fair application, the application must be filed at least thirty (30) days before the date specified for the holding of the first occasion. If this filing is not made at least thirty (30) days prior to the date scheduled for the first bingo game, the license will be automatically denied. If an application

filed between these dates is not denied within sixty (60) days after receipt, the application is considered approved. Within ten (10) days after approval the commissioner shall send the applicant its license.

4.2.2.5 All annual and limited license applications received before August 15, 1981, will be considered to be filed on August 15, 1981. All State Fair license applications will be considered filed on the day the state tax commissioner receives them.

4.3 Transferability. - No bingo license issued under the Act may be transferred.

§ 110-16-5. Annual license.

5.1 A charitable or public service organization may apply for an annual license which is valid for one (1) year from the date of issuance and allows the licensee to hold no more than two (2) bingo occasions per week. Each occasion may not exceed six (6) hours in duration.

5.2 Only one (1) license per year may be granted to the major organization and all of its auxiliaries, affiliates, chapters or lodges. If the major organization does not obtain a license, the auxiliary, affiliate, chapter or lodge may.

5.2.1 Example 1. - X is a national charitable organization with its headquarters in another state. Chapter B is located in Morgantown. This chapter wishes to hold bingo occasions. Chapter B may apply for and obtain a license.

5.2.2 Example 2. - X is a national charitable organization with its headquarters in another state. X applies for and obtains a bingo license. X also has two (2) chapters in this State. Chapter A is located in Beckley and Chapter B in Morgantown. Both Chapter A and Chapter B wish to hold bingo occasions. Both may apply for and obtain a license.

5.2.3 Example 3. - C is a West Virginia volunteer fire department with two auxiliaries in the state. If C applies for and obtains a bingo license, neither of the auxiliaries may do so. However, the auxiliaries may play on C's license if they comply with all provisions of the Act and these regulations. (e.g. the total number of bingo occasions conducted by C and its auxiliaries may not exceed two (2) per week or one hundred four (104) per year, etc.).

5.3 Branches, chapters or lodges of any national association or organization are not considered affiliates or auxiliaries of each other. Nor are local churches of a nationally organized church considered to be affiliates or auxiliaries of each other. In addition every school is to be considered a major organization for purposes of this Act.

5.4 No two (2) or more organizations may hold a joint bingo occasion under any annual license.

5.5 Bingo licenses must be conspicuously displayed at the location where the bingo occasions are held.

5.6 All bingo occasions must be open to the public and there is no minimum age to participate in any bingo game. A person must be at least eighteen (18) years of age to conduct any bingo game.

§ 110-16-6. Limited occasion license.

6.1 A charitable or public service organization may apply for a limited occasion license which is valid only for the time period specified in the application. This time period may not exceed two (2) weeks and bingo occasions may be held only once every twenty-four (24) hours during the time period. Each bingo occasion may not exceed twelve (12) hours in duration.

6.2 Only three (3) limited occasion licenses a year may be granted to the major organization and all of its auxiliaries, affiliates, chapters or lodges. If the major organization does not obtain a license, the auxiliary, affiliate, chapter or lodge may. If an organization holds an annual license and they wish to hold bingo occasions as provided for in this section, they must also obtain a limited occasion license. But, no licensee that holds an annual license may obtain more than one (1) limited occasion license.

6.3 For purposes of this section, branches, chapters or lodges of any national association or organization are not considered affiliates or auxiliaries of each other. Nor are local churches of a nationally organized church considered to be affiliates or auxiliaries of each other. In addition, every school is to be considered a major organization for purposes of this Act.

6.4 Two (2) or more organizations may hold a joint bingo occasion if each such organization has a valid limited occasion license for such jointly held occasion.

6.5 Bingo licenses must be conspicuously displayed at the location where the bingo occasions are held.

6.6 All bingo occasions shall be open to the public and there is no minimum age to participate as a player in any bingo game. A person must be at least eighteen (18) years of age to conduct a bingo game.

§ 110-16-7. License fees and exemption from taxes.

7.1 License fees.

7.1.1 Annual License - \$100.00.

7.1.2 Bona fide senior citizens organization annual license - \$50.00.

7.1.2.1 Clarification of term "Bona Fide Senior Citizen Organization." This term means any nonprofit organization that is organized and operated solely to provide service to persons who are fifty-five (55) or older. These organizations must be described, and qualified under I.R.C. Section

501(c)(3) and have a determination letter to that effect from the Internal Revenue Service.

7.1.3 Limited occasion license - \$25.00.

7.1.4 State Fair license - \$500.00.

7.1.5 All fees must be paid to the tax commissioner and must accompany the application for license. If no license fee accompanies the application, the application will not be considered to be filed. License fee amounts, if mailed, must be remitted in the form of a check or money order except the license fee for the State Fair License. Payment of the State Fair license fee must be made either by certified check or money order. If payment is made in person to the West Virginia Tax Department, Division of Excise and License Tax, it may be made in case.

7.2 Exemption from taxes.

7.2.1 Franchise taxes.

7.2.1.1 The license fee imposed is in lieu of all other license or franchise taxes or fees of this state.

7.2.1.2 No political subdivision of the state may impose, in regard to any bingo occasion, any license or franchise taxes or fees.

7.2.2 Consumers sales taxes.

7.2.2.1 The licensee is not required to pay consumers sales tax on purchases to be used or consumed in the conduct of a bingo game. This exemption does not apply to State Fair licensees.

7.2.2.2 The licensee is not required to collect consumers sales tax on any admission fees or any sales of bingo cards. This does not apply to State Fair licensees.

7.2.3 Other taxes. - The gross proceeds derived from the conduct of bingo occasions are exempt from:

7.2.3.1 state and local business and occupation taxes,

7.2.3.2 income taxes,

7.2.3.3 excise taxes, and

7.2.3.4 all special taxes.

7.2.4 This subsection does not apply to State Fair bingo proceeds.

§ 110-16-8. Information required in applications.

8.1 All applications for bingo licenses must contain:

8.1.1 The name of the applicant and whether the applicant is the major organization, such as, for example, a national headquarters of a fraternal or religious association, or an affiliate, subsidiary, chapter or lodge of a major organization.

8.1.2 The name of the state or national organization.

8.1.3 The headquarters' address of the state or national organization.

8.1.4 The address of the applicant organization.

8.1.5 The telephone number of the applicant organization. If there is no telephone number for the applicant organization, then the address and telephone number of the person applying on behalf of the organization must be listed.

8.1.6 The address or location where bingo games are to be held.

8.1.7 For charitable organizations, a copy of an Internal Revenue Service determination letter which states that the organization is exempt from taxation under Internal Revenue Code Section 501(a) and is described in Internal Revenue Code 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d).

8.1.8 A copy of the organization's charter, articles of incorporation or other evidence showing that the organization has been in existence for at least two (2) years prior to the making of this application.

8.1.9 The day or days of the week and the time or times when the bingo occasions will be held. The date of the first bingo occasion must also be included.

8.1.10 The name of the owner of the premises where the bingo occasions are to be held.

8.1.11 A copy of all rental agreements involved if the premises are leased or subleased.

8.1.12 A statement as to whether the applicant has ever had a previous application for any bingo license refused, or whether any previous license has been revoked or suspended. This subsection applies to bingo licenses applied for or issued by other states.

8.1.13 A detailed statement of the charitable or public service purpose or purposes for which the bingo proceeds will be spent.

8.1.14 A list and description of all expenses estimated to be incurred in connection with the holding of bingo occasions and any concessions operated. The name and address of each payee is also to be included.

8.1.15 If a concession is to be operated by an individual or organization other than the applicant organization, a copy of any written agreement or an explanation of any oral agreement made must be attached. This

must include agreements providing for any type of remuneration to be received by the concession operator.

8.1.16 A statement stating that the individuals specified in Section 8.1.18, 8.1.19 or 8.1.20 and the officers of the applicant organization understand that:

8.1.16.1 Allowing anyone, other than authorized individuals, to conduct any portion of the bingo occasion or operate any concessions is a violation of the Act.

8.1.16.2 Reports must be filed and records must be kept as required in the Act.

8.1.16.3 That it is a crime to violate any provision of the Act.

8.1.16.4 That any violations may result in suspension or revocation of its license and denial of applications for subsequent licenses.

8.1.17 A sworn statement by an authorized representative of the applicant organization that the information contained in the application is true to the best of his knowledge.

8.1.18 A list of the names and addresses of all officers and members of the board of directors, governors or trustees of the applicant organization.

8.1.19 Limited occasion licenses. - In addition to the preceding requirements, the application must also include:

8.1.19.1 The names and addresses of two (2) or more bona fide active members of the organization. These members must have the overall responsibility for the organizations bingo operations. One (1) of these members must be present at all times when bingo is conducted.

8.1.19.2 The names and addresses of the highest elected officer of the applicant organization and his officially appointed designee. One (1) of these members must also be present at all times when bingo is conducted.

8.1.20 Annual licenses. - In addition to the preceding requirements, the application for an annual license must also include:

8.1.20.1 The names, addresses and telephone numbers of three (3) or more bona fide active members of the organization. These members must have the overall responsibility for the organizations bingo operations. One (1) of these members must be present at all times when bingo is conducted.

8.1.20.2 The names, addresses and telephone numbers of the highest elected officer of the applicant organization and his officially appointed designee. One (1) of these members must also be present at all times when bingo is conducted.

§ 110-16-9. Amendment of license.

9.1 If any circumstances, which are beyond the licensee's control, arise that would make the information in the original application inaccurate or would prevent the licensee from holding a bingo occasion in accordance with the information in the application, the licensee must request approval from the tax commissioner to amend or modify its license.

9.2 Application for amendment or modification shall be made to the tax commissioner. The commissioner shall provide application forms for this purpose. The commissioner, upon receipt of such application, may:

9.2.1 modify the license to reflect changes in the holding of one (1) or more bingo occasions under an annual license if these changes are temporary; or

9.2.2 modify the license to reflect changes affecting fewer than one-third (1/3) of the bingo occasions to be held under a limited occasion license or,

9.2.3 amend the license if the changes under an annual license are permanent or if the changes under a limited occasion license affect one-third (1/3) or more of the occasions scheduled.

9.3 Notification by the tax commissioner of amendments or modifications will be made to the licensee by regular mail.

§ 110-16-10. Licensee rules and regulations.

10.1 Each licensee may adopt rules and regulations so long as they are not inconsistent with or in violation of the Bingo Act or these rules and regulations.

10.2 No licensee may allow an individual not present to play any bingo games.

10.3 Any rules and regulations adopted by a licensee must be made available for inspection at all bingo occasions.

10.4 Any rules and regulations adopted are a part of the records required to be kept.

10.5 A copy of licensee promulgated rules and regulations must be filed with the tax commissioner.

§ 110-16-11. Limits on prizes awarded: State Fair excepted.

11.1 Total prizes awarded during an annual or limited occasion license period may not exceed in value the lesser of seventy-five percent (75%) of the gross proceeds (See Section 2.1.10.1) collected during the license period or one hundred seventy-five thousand dollars (\$175,000).

11.2 Total prizes awarded for a single bingo occasion, whether held by one (1) licensee or by two (2) or more limited occasion licensees holding a joint bingo occasion, may not exceed seven thousand five hundred dollars (\$7,500).

11.2.1 Example. - B organization holds bingo occasions on Tuesday and Thursday under a valid license. On Tuesday, prizes totaling five thousand dollars (\$5,000) are awarded. B may not award ten thousand dollars (\$10,000) on Thursday or any subsequent night. Prizes for any bingo occasion may not exceed seven thousand five hundred dollars (\$7,500).

11.3 Prizes must be valued at fair market value on the day they are awarded.

11.4 Prizes may be money or merchandise, but they may not be beer, nonintoxicating beer, wine, spirits or alcoholic liquor.

11.5 This section does not apply to State Fair bingo licenses.

§ 110-16-12. Operators of bingo games and related concessions; State Fair excepted.

12.1 Only individuals who are active members of the licensee organization or its authorized auxiliary may participate in the conduct of any bingo game or operate any concession in conjunction with a bingo occasion. This subsection does not apply to State Fair bingo licenses.

12.2 In no instance may an individual, under eighteen (18) years of age, participate in the conduct of a bingo occasion. However, a person under eighteen (18) may play bingo at a bingo occasion.

§ 110-16-13. Compensation: State Fair excepted.

13.1 No monetary consideration may be paid to any individual who participates in the conduct of a bingo occasion. All net proceeds derived from the operation of a concession under these circumstances become a part of the gross proceeds of the bingo occasion.

13.2 This section does not apply to State Fair bingo licenses.

§ 110-16-14. Concessions exception.

14.1 The only exceptions to the statement that no monetary consideration may be paid to any individual who participates in the conduct of a bingo occasion are:

14.1.1 That a licensee may allow another to operate concessions in conjunction with bingo occasions if the following conditions are met:

14.1.1.1 the licensee holds regular meetings or functions other than bingo occasions;

14.1.1.2 the concession is regularly operated at these regular meetings;

14.1.1.3 the individual, firm or corporation who operates the concession at regular meetings is to be the concessionaire for bingo occasions;

14.1.1.4 the agreement terms are the same for both regular meetings and for bingo occasions. This agreement must be filed with the application for license and if any changes are made in the agreement they must be filed with the tax commissioner within ten (10) days.

14.1.1.4.a In this instance, the concessionaire may be compensated from the bingo occasion proceeds for his services. This compensation is to be considered a reasonable and necessary expense as provided for in Section 16.

14.1.2 That the licensee may also allow any charitable organization to act as concessionaire if the net proceeds it receives from the concession are used solely for charitable or public service purposes of that organization.

§ 110-16-15. Rent.

15.1 A licensee may rent premises for the holding of bingo occasions, and these expenses shall be considered a reasonable and necessary expense as provided for in Section 16.

15.2 No owner, lessee or agent of premises may receive rent or other fee from annual licensees for the holding of more than two (2) bingo occasions per week on his premises.

15.3 No owner, lessee or agent of premises may receive rent or other fee from limited occasion licensees for the holding of more than forty-two (42) bingo occasions per year on his premises.

15.4 The total number of bingo occasions for which any owner, lessee, or agent may receive rent or other fee in any one year may not exceed one hundred four (104).

15.5 If the owner of premises where bingo occasions are held is also a licensee, no rent or other fee for permitting its premises to be used by any person may be paid to that owner. These owners may be reimbursed for reasonable, necessary and actual expenses incurred by such use, but the amount may not exceed fifty dollars (\$50).

§ 110-16-16. Payment of reasonable expenses: disbursements and net proceeds.

16.1 Reasonable, necessary and actual expenses may be paid from the proceeds of the conduct of bingo, but the payments cannot exceed ten percent (10%) of the gross receipts collected during a license period. These payments may be made for:

16.1.1 rent, but only if a copy of the rental agreement was filed with the application for license and any changes to the agreement were filed within ten (10) days of being made;

16.1.2 custodial services;

16.1.3 costs to the licensee for equipment and supplies used to hold the bingo occasion;

- 16.1.4 costs to the licensee for advertising the bingo occasion;
- 16.1.5 hiring security personnel;
- 16.1.6 the actual cost to the licensee for prizes;
- 16.1.7 other reasonable, necessary and actual expenses.

16.2 The cost of refreshments, souvenirs or any other items sold or provided through any concession may not be paid for out of the bingo proceeds.

16.3 The net bingo proceeds, including any interest earned thereon, must be expended for the charitable or public service purpose stated in the application within one (1) year after the expiration of the license.

16.4 None of the bingo proceeds may be used for construction, acquisition, improvement, maintenance or repair of real or personal property unless such property is used exclusively for charitable or public service purposes.

16.4.1 Example 1. - Bingo proceeds may not be used to build a clubhouse for X charitable organization.

16.4.2 Example 2. - Bingo proceeds may not be used to build a camp for the underprivileged.

16.4.3 Example 3. - Bingo proceeds may not be used to maintain X club's barbecue pit.

16.4.4 Example 4. - Bingo proceeds may not be used to repair a bus that transports children from the inner city to a church day camp.

16.5 If a licensee, in good faith, finds that it cannot meet or comply with any of the above requirements or wishes to use the proceeds of bingo games for a long range charitable or public service purpose, such as, for example, building a fire hall, then application must be made to tax commissioner for permission to:

16.5.1 spend the net proceeds for charitable or public service purpose not listed in the application, or

16.5.2 spend the net proceeds later than the one (1) year time period. If this permission is granted, the licensee must file quarterly reports with the tax commissioner until the proceeds are spent. This application must be filed no later than sixty (60) days prior to the end of the one (1) year time period.

§ 110-16-17. Records.

17.1 Separate accounting and bookkeeping procedures for bingo operations must be maintained by each licensee. This shall mean, at the minimum, that a separate bank account must be maintained for bingo and serially numbered checks must be used in conjunction with this account. Detailed books of receipts and disbursements must also be kept.

17.2 All records must be maintained for at least three (3) years or for such longer period as the tax commissioner shall, in writing, order and these records must be held open for reasonable inspection by the commissioner. Results of these inspections may be used as grounds for performing an audit of the licensee's books.

17.3 Audits of the licensee's books may be performed by the tax commissioner if he has reasonable cause to believe that the licensee has violated the act.

§ 110-16-18. Advertising.

18.1 A licensee may advertise its bingo occasions in a reasonable manner; **Provided**, That such advertisements must include the name of the licensee holding the bingo occasion. This shall be considered a reasonable and necessary expense as provided for in Section 16.

§ 110-16-19. Fraud; penalties.

19.1 Any person or licensee that knowingly conducts or participates in a fraudulently or deceptively conducted bingo game with intent to defraud is guilty of a felony.

19.2 The penalties upon conviction are:

19.2.1 A fine of not less than five hundred (\$500) or more than ten thousand dollars (\$10,000); and/or

19.2.2 imprisonment in the penitentiary for not less than one (1) or more than five (5) years.

§ 110-16-20. Obtaining license fraudulently; penalties.

20.1 Any individual, association, organization or corporation that knowingly uses false, deceptive or fraudulent methods to obtain a license for themselves or others is guilty of a misdemeanor.

20.2 The penalty upon conviction is a fine of not less than five hundred (\$500) or more than ten thousand dollars (\$10,000).

§ 110-16-21. Violation of provisions; penalties.

21.1 Any person who violates the provisions of the bingo act (other than the provisions concerning fraud and fraudulently obtaining a license) is guilty of a misdemeanor.

21.2 The penalty upon conviction is a fine of not less than one hundred (\$100) or more than one thousand dollars (\$1,000). The penalties upon a second conviction are:

21.2.1 a fine of not less than one hundred (\$100) or more than one thousand dollars (\$1,000); and/or

21.2.2 imprisonment for not more than one (1) year.

§ 110-16-22. Proceeds of State Fair.

22.1 All proceeds which accrue to the West Virginia State Fair are considered used for charitable or public service purposes. Proceeds that the State Fair Board pays to or allows the licensee to retain are expenses incurred by the State Fair Board.

§ 11-16-23. State Fair.

23.1 These sections allow bingo occasions to be held at the State Fair. To obtain a State Fair bingo license a person must:

23.1.1 have held regular bingo games for a period of two (2) years prior to the filing of the application.

23.1.2 file an application for a license which must include a copy of any license or agreement entered into between the State Fair Board or its licensee and the applicant;

23.1.3 submit a license fee of four thousand dollars (\$4,000). This payment must be made by certified check or money order, or, if the payment is made in person at the Division of Excise and License Taxes, it may be made in cash.

23.2 The State Fair Board may adopt reasonable rules and regulations to govern the holding of bingo games at the State Fair. These rules and regulations may not be inconsistent with or in violation of the Act.

23.3 In regard to the taxability of persons holding bingo occasions at the State Fair, see Section 7.2.

§ 110-16-24. Administration.

24.1 The tax commissioner has the power to:

24.1.1 deny an application for license if the issuance of the license would be in violation of this Act.

24.1.1.1 The applicant may protest the denial of the application. Any protest must be made in writing and must state the reason for the protest. This must be filed with the tax commissioner within sixty (60) days of the receipt of the denial of the license.

24.1.1.2 When the protest is received by the Commissioner, a time and place will be set for a hearing on the matter.

24.1.1.3 The Commissioner shall send a notice containing;

24.1.1.3.a the date of hearing;

24.1.1.3.b the time of hearing;

24.1.1.3.c the place where the hearing will be held; and

24.1.1.3.d a short, plain statement of the matters asserted.

24.1.1.4 Notice must be service by certified mail, personal or substituted service.

24.1.1.5 At the hearing the applicant may:

24.1.1.5.a produce evidence in its behalf;

24.1.1.5.b be represented by counsel.

24.1.1.6 A decision by the commissioner upholding the denial of the license is subject to judicial review on appeal by the applicant.

24.1.1.7 The burden of proof is on the applicant.

24.1.2 revoke, suspend or refuse to renew a license if:

24.1.2.1 The licensee or any member of the licensee's organization has been convicted under West Virginia Code § 47-20-18 or § 47-20-19, and the commissioner finds it would be in the public interest to do so;

24.1.2.2 the licensee has violated any of the provisions of the Act;

24.1.2.3 the licensee has failed to maintain records or file reports as required. Licenses will only be revoked, suspended or refused under this section if the commissioner finds that the failure to record or report will impair the commissioner's ability to administer the act.

24.1.2.4 Before revocation or suspension of a license, the commissioner must give ten (10) days notice to annual licensees or three (3) days notice to limited occasion and State Fair licensees. This notice must be written, must state reasons for the action and must specify a time and place where the licensee may show why the action should not be taken. Notice may be served by:

24.1.2.4.a certified mail to the licensee's address;

24.1.2.4.b certified mail to the person who applied for the license on behalf of the organization; or

24.1.2.4.c personal or substituted service on the person who applied for the license on behalf of the organization.

24.1.2.5 At the time designated for any hearing the licensee may:

24.1.2.5.a produce evidence in its behalf; and

24.1.2.5.b be represented by counsel.

24.1.2.6 A decision of the commissioner suspending or revoking a license is subject to judicial review on appeal by the licensee.

24.1.3 conduct hearings according to the provisions of the State Administrative Procedures Act (West Virginia Code § 29A-5-1 et seq.). The burden of proof in such hearings shall be upon the licensee.

24.1.4 issue emergency orders suspending license.

24.1.4.1 These orders may be issued when:

24.1.4.1.a The commissioner believes that a criminal violation of the act has occurred;

24.1.4.1.b the commissioner believes that the suspension is necessary to prevent a criminal violation of the act; or

24.1.4.1.c the commissioner believes that the suspension is necessary to preserve the public peace, health, safety, morals, good order or general welfare.

24.1.4.2 These orders must set forth the grounds for issuance. This includes a statement of facts of the alleged emergency. The order must be served by personal or substituted service on the licensee or the person who applied for the license on behalf of the licensee.

24.1.4.3 These orders become effective immediately upon issuance and service.

24.1.4.4 After issuance of an emergency order the commissioner must set a time and place for hearing within five days. At this hearing the licensee may show cause why its license should not be revoked.

§ 110-16-25. Filing of reports.

25.1 Annual licensees must file, quarterly and annually, financial reports on forms provided by the commissioner. These reports must summarize the financial activity of the licensee for the reported time period. These quarterly reports must be filed no later than twenty (20) days after the end of the quarter which it covers. Annual reports must be filed no later than thirty (30) days after the expiration of the license. With the annual report, the licensee must include its expired license.

25.1.1 Example 1. - Y organization obtains a license and starts bingo operations on November 1. Its quarterly reports are due on January 20 (twenty (20) days after the end of this quarter which is December 31), April 20, July 20 and October 20. The annual report will be due on November 30 (thirty (30) days after the expiration of the license which will expire on October 30).

25.1.2 Quarters will be on standard basis. In other words January 1 - March 1, is the first quarter, April 1 - June 30, is the second quarter and October - December 1, is the fourth quarter.

25.2 Limited occasion licensees and State Fair licensees must file a financial report on forms provided by the commissioner. These reports will summarize financial activity for the license period. This report must be filed within thirty (30) days after the expiration of the license and the expired license must accompany such report.

25.3 Final reports for annual licensees and limited occasion licensees must contain the name, address and social security number of any person who receives prizes with an aggregate value of over one hundred dollars (\$100).

§ 110-16-26. Filing of copy of license.

26.1 When the commissioner grants a license, he must file a copy of the license with the clerk of the county commission of the county in which the bingo occasions are to be held. The clerk shall record this copy.

26.2 The commissioner must make a copy of the application available for public inspection.

§ 110-16-27. County option election.

27.1 The county commission may call a local option election to determine if the provisions of this act will continue in their county. But, no local option election can be called to disapprove the playing of bingo games at the State Fair. Note that bingo will be permitted in all counties unless and until a local option election is held which results in a majority of voters determining that the provisions of this act will not continue in force and effect in that county.

27.2 To call the election, a petition for election must be made. The form must be substantially as follows:

PETITION ON LOCAL OPTION ELECTION
RESPECTING THE CONDUCT OF
BINGO GAMES FOR
CHARITABLE PURPOSES
IN _____ COUNTY
WEST VIRGINIA

Each of undersigned certifies that he or she is a person residing in _____ county, West Virginia, and is duly qualified to vote in that county under the laws of the state, and that his or her name, address, and the date of signing this petition are correctly set forth below.

The undersigned petition the county commission to call and hold a local option election at: (1) a special or (2) the next primary, general or special election (the petition shall specify (1) or (2) upon the following question: Shall the provisions of article twenty (20), chapter forty-seven (47) of the

Code of West Virginia, one thousand nine hundred thirty-one (1931), as amended, continue in effect in _____ county, West Virginia.

NAME	ADDRESS	DATE
<p>_____ (Each person signing must specify either his post office address or his street number).</p>		

At least ten percent (10%) of the persons qualified to vote within the county must sign this petition before the election may be called.

27.3 If the petition is filed as specified, the county commission must enter an order calling a local option election, and must publicize notice of such local option election by publication of a Class II-O legal advertisement with a county publication area. This notice must be published within fourteen (14) consecutive days before the election.

27.4 Any person qualified to vote in the county at any primary, general or special election may vote at the local option election.

27.5 Election officers appointed and qualified to serve at any primary, general or special election must conduct the local option election. These election officers shall count the ballots and make a return which shall be certified by the commissioners of election to the county commission. The county commission shall canvass the ballots and certify the result without delay.

27.6 Local option elections may be held at the same time as any primary, general or special elections, but, it must be held in connection with and as a part of such election if it is held at the same time.

27.7 The form for the ballot must be substantially as follows:

"Shall the playing of bingo to raise money for charitable or public service organizations continue in effect in _____ county of West Virginia? (Place a cross mark in the square opposite your choice)." Yes No

27.8 If a majority vote no, then this act no longer continues in effect in that county.

27.9 There must be five (5) years between local option elections on this question, whether the question was approved or disapproved at the previous local option election.

§ 110-16-28. Prohibited acts.

28.1. Any person, individual, organization, association or corporation convicted of a felony, or misdemeanor for a gambling offense:

28.1.1 may not obtain, either directly or indirectly, a bingo license;

28.1.2 may not conduct a bingo game;

28.1.3 may not operate a concession;

28.1.4 may not lease or provide to any licensee organization any premise where bingo occasions may be held.

28.2. This restriction applies for ten (10) years from the date of conviction.

Example 1. - X was convicted of a misdemeanor gambling offense in 1972. During the year 1981, X may not participate in the operation of bingo in any way. But, in 1983, X would be permitted to participate, if he had obtained a valid license.

§ 110-15-29. Restriction on use of bingo equipment.

29.1 A licensee may only use bingo equipment:

29.1 which it owns;

29.2 which it borrows without compensation from another licensee, or

29.3 which it leases from another licensee for a reasonable and customary amount.

Example 1. - Bill's Bingo Equipment Rental, an organized for profit company, may not rent bingo equipment to licensees in this state.

29.2. Rental or purchase of bingo equipment shall be considered a reasonable and necessary expense as provided for in Section 16.

§ 110-16-30. Requirement for a registration statement.

30.1. Unless exempt, every charitable or public service organization that obtains a bingo license must file an annual registration statement with the Secretary of State's Office, under the Solicitation of Charitable Funds Act.

30.2. These registration statements must be filed on forms provided by the Secretary of State and these must be filed before any bingo occasions are held.

30.3. These statements must contain:

30.3.1 the name of the organization;

30.3.2 the purpose or purposes for which it was formed;

30.3.3 the principal address of the organization;

30.3.4 the address of an offices in this State; if there is no office in this State, then the address of the person who has the organization's financial records;

30.3.5 the names and addresses of any chapters, branches or affiliates in this State;

- 30.3.6 the place where the organization was legally established;
- 30.3.7 the date when the organization was legally established;
- 30.3.8 the form of its organization;
- 30.3.9 any determination of tax exempt status by the Internal Revenue Service;
- 30.3.10 the names and addresses of the officers, directors, trustees and the principal salaried executive staff officer;
- 30.3.11 the balance sheet and income and expense statement of the organization for the previous fiscal year. This must be audited by an independent public accountant if the organization raised more than fifty thousand dollars (\$50,000) in contributions. Or a copy of a financial statement in a consolidated report covering all information about the previous year's fund-raising activities. This statement must be audited by an independent public accountant if the organization raised more than fifty thousand (\$50,000) in contributions;
- 30.3.12 a statement as to whether the organization is going to solicit contributions on its own behalf or have others do the solicitation;
- 30.3.13 a statement as to whether the organization has authorization from any other government agency to solicit contributions;
- 30.3.14 a statement as to whether the organization has ever been enjoined from soliciting contributions;
- 30.3.15 the purposes for which the contributions will be used;
- 30.3.16 the name or names that it will use to solicit contributions;
- 30.3.17 the names of individuals or officers who will have custody of the contributions;
- 30.3.18 the names of individuals or officers who will have responsibility for distribution of the contributions.

These statements must be sworn and verified under oath. They must be signed by an authorized officer of the organization or by an independent public accountant and by the chief fiscal officer of the organization.

30.4. The annual fee for registration is ten dollars (\$10).

30.5. An organization is exempt from filing the registration statement if:

30.5.1 They are an educational institution that has a curriculum registered or approved by the State Board of Education;

30.5.2 They are requesting contributions for a named individual and all contributions collected are turned over to that named individual;

30.5.3 They are a charitable organization that does not intend to raise or receive contributions of more than seven thousand five hundred dollars (\$7,500) per year or do not receive contributions from more than ten (10) persons per year. To be exempt here all fund raising activities must be carried on by persons who are not paid for their services and no part of the organizations assets or income does not benefit any officer or member. But, a registration statement must be filed within thirty days (30) after it has received total contributions of seven thousand five hundred dollars (\$7,500);

30.5.4 They are nonprofit and charitable hospital;

30.5.5 They are an organization which solicits only within its own membership;

30.5.6 They are a local post, camp, other element or county unit of such element of a bona fide veterans organization which issues charters to its elements in this State;

30.5.7 They are a bona fide volunteer fireman's organization or a bona fide ambulance association or a bona fide rescue squad association or a bona fide auxiliary or affiliate of any such organization. All fund raising activities must be carried on by organization members and they may not receive compensation for their services;

30.5.8 They are a religious organization or any group affiliated with the religious organization that forms an integral part of it. In this case, none of the net income may benefit any individual and the organization must have a tax-exempt status determination letter from the Internal Revenue Service;

30.5.9 They are a county church congregation or local congregation of a religious affiliation;

30.5.10 They are a municipal or county little league or similar youth athletic organization;

30.5.11 They are a service club.

Although these organizations do not have to file a registration statement, they must file an annual exemption statement with the Secretary of State. This exemption statement must include, the name and address of the organization; the purpose of the organization; a statement setting forth the reason for the claim for exemption. If exempted, the Secretary of State will issue a letter of exemption. No registration fees will be required of exempt organizations.

30.6 Any professional fund raising organization which receives a State-Fair bingo license must also annually register with the Secretary of State. Application for registration must be made in writing and under oath on forms prescribed by the Commission on Charitable Organizations. A registration fee of fifty dollars (\$50) is required and a bond of ten thousand dollars (\$10,000)

must be filed with and approved by the Secretary of State. The applicant must be the principal obligator on this bond and have one or more sureties that are satisfactory to the Secretary of State. The registration application must be approved by the Secretary of State before the organization may solicit.

APPENDIX A

UNITED STATES TREASURY REGULATIONS (Reg. Section 1.501(c)(3)-1)

The above regulation is intended to provide guidance to the public in the determination of what a charitable or public service activity or endeavor is.

§ 1.501(c)(3)-1. Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals.

(a) Organization and operational tests.

(1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

(2) The term "Exempt Purpose or Purposes", as used in this section, means any purpose or purposes specified in section 501(c)(3), as defined and elaborated in paragraph (d) of this section.

(b) Organizational test.

(1) In general.

(A) An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its "articles") as defined in subparagraph (2) of this paragraph:

(i) Limit the purposes of such organization to one or more exempt purposes; and

(ii) Do not expressly empower the organization to engage, otherwise, than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

(B) In meeting the organizational test, the organization's purpose, as stated in its articles, may be as broad as, or more specific than, the purposes stated in section 501(c)(3). Therefore, an organization which, by the terms of its articles, is formed "for literary and scientific purposes within the meaning of section 501(c)(3) of the Code shall, if it otherwise meets the requirements in this paragraph, be considered to have met the organizational test. Similarly, articles stating that the organization is created solely "to receive contributions and pay them over to organizations which are described in section 501(c)(3) and exempt from taxation under section 501(a)" are sufficient

for purposes of the organizational test. Moreover, it is sufficient if the articles set forth the purpose of the organization to be the operation of a school for adult education and describe in detail the manner of the operation of such school. In addition, if the articles state that the organization is formed for "Charitable Purposes", such articles ordinarily shall be sufficient for purposes of the organizational test (see subparagraph (5) of this paragraph for rules relating to construction of terms).

(C) An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it to carry on, otherwise than as an insubstantial part of its activities, activities which are not in furtherance of one or more exempt purposes, even though such organization is, by the terms of such articles, created for a purpose that is no broader than the purposes specified in section 501(c)(3). Thus, an organization that is empowered by its articles "to engage in a manufacturing business," or "to engage in the operation of a social club" does not meet the organizational test regardless of the fact that its articles may state that such organization is created "for charitable purposes within the meaning of Section 501(c)(3) of the Code."

(D) In no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test. Similarly, such an organization will not meet the organizational test as a result of statements or other evidence that the members thereof intend to operate only in furtherance of one or more exempt purposes.

(E) An organization must, in order to establish its exemption, submit a detailed statement of its proposed activities with and as a part of its application for exemption (see paragraph (b) of § 1.501(a)-1).

(2) Articles of organization. - For purposes of this section, the term "articles of organization" or "articles" includes the trust instrument, the corporate charter, the articles of association, or any other written instrument by which an organization is created.

(3) Authorization of legislative or political activities. - An organization is not organized exclusively for one or more exempt purposes if its articles expressly empower it:

(A) To devote more than an insubstantial part of its activities to attempting to influence legislation by propaganda or otherwise; or

(B) Directly or indirectly to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of or in opposition to any candidate for public office; or

(C) To have objectives and to engage in activities which characterize it as an "action" organization as defined in paragraph (c)(3) of this section. The terms used in subdivisions (A), (B), and (C) of this

subparagraph shall have the meanings provided in paragraph (c)(3) of this section.

(4) Distribution of assets on dissolution. - An organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized. However, an organization does not meet the organizational test if its articles or the law of the State in which it was created provide that its assets would, upon dissolution, be distributed to its members or shareholders.

(5) Construction of terms. - The law of the State in which an organization is created shall be controlling in construing the terms of its articles. However, any organization which contends that such terms have under State law a different meaning from their generally accepted meaning must establish such special meaning by clear and convincing reference to relevant court decisions, opinions of the State attorney general, or other evidence of applicable State law.

(6) Applicability of the organizational test. - A determination by the Commissioner or a district director that an organization is described in section 501(c)(3) and exempt under section 501(a) will not be granted after July 26, 1959 (regardless of when the application is filed), unless such organization meets the organizational test prescribed by this paragraph. If, before July 27, 1959, an organization has been determined by the Commissioner or district director to be exempt as an organization described in section 501(c)(3) or in corresponding provision of prior law and such determination has not been revoked before such date, the fact that such organization does not meet the organizational test prescribed by this paragraph shall not be a basis for revoking such determination. Accordingly, an organization which has been determined to be exempt before July 27, 1959, and which does not seek a new determination of exemption is not required to amend its articles of organization to conform to the rules of this paragraph, but any organization which seeks a determination of exemption after July 26, 1959, must have articles of organization which meet the rules of this paragraph. For the rules relating to whether an organization determined to be exempt before July 27, 1959, is organized exclusively for one or more exempt purposes, see 26 CFR (1939 39.101(5)-1 (Regulation 118) as made applicable to the Code by Treasury Decision 6091, approved August 16, 1954 (19 F.R. 5167; C.B. 1954-2, 47).

(c) Operational test.

(1) Primary activities. - An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more

than an insubstantial part of its activities is not in furtherance of an exempt purpose.

(2) Distribution of earnings. - An organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. For the definition of the words "private shareholders or individual", see paragraph (c) of § 1.501(a)-1.

(3) "Action" organization.

(A) An organization is not operated exclusively for one or more exempt purposes if it is an "Action" organization as defined in subdivisions (B), (C), or (D) of this subparagraph.

(B) An organization is an "Action" organization if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. For this purpose, an organization will be regarded as attempting to influence legislation if the organization -

(i) Contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or

(ii) Advocates the adoption or rejection of legislation. The term "legislation", as used in this subdivision, includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.

(C) An organization is an "Action" organization if it participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term "Candidate for Public Office" means an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State or local. Activities which constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to such a candidate.

(D) An organization is an "Action" organization if it has the following two characteristics:

(i) Its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and

(ii) It advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the

public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered.

(E) An "Action" organization, described in subdivisions (ii) or (iv) of this subparagraph, though it cannot qualify under section 501(c)(3) may nevertheless qualify as a social welfare organization under section 501(c)(4) if it meets the requirements set out in paragraph (a) of § 1.501(c)(4)-1.

(d) Exempt purposes.

(1) In general.

(A) An organization may be exempt as an organization described in section 501(c)(3) if it is organized and operated exclusively for one or more of the following purposes:

- (i) Religious,
- (ii) Charitable,
- (iii) Scientific,
- (iv) Testing for public safety,
- (v) Literary,
- (vi) Educational, or
- (vii) Prevention of cruelty to children or animals.

(B) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (A) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organizations, or persons controlled, directly or indirectly, by such private interest.

(C) Since each of the purposes specified in subdivision (A) of this subparagraph is an exempt purpose in itself, an organization may be exempt if it is organized and operated exclusively for any one or more of such purposes. If, in fact, an organization is organized and operated exclusively for exempt purpose or purposes, exemption will be granted to such an organization regardless of the purpose or purposes specified in its application for exemption. For example, if an organization claims exemption on the ground that it is "Educational", exemption will not be denied if, in fact, it is "Charitable".

(2) "Charitable" defined. - The term "Charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration in section 501(c)(3) of other

tax-exempt purposes which may fall within the broad outlines of "Charity" as developed by judicial decisions. Such term includes: Relief of the poor and distressed or of the underprivileged; advancement of religion; advancement of education or science; erection or maintenance of public buildings, monuments, or works; lessening of the burdens of Government; and promotion of social welfare by organizations designed to accomplish any of the above purposes, or

- (A) to lessen neighborhood tensions;
- (B) to eliminate prejudice and discrimination;
- (C) to defend human and civil rights secured by law; or
- (D) to combat community deterioration and juvenile delinquency.

The fact that an organization which is organized and operated for the relief of indigent persons may receive voluntary contributions from the persons intended to be relieved will not necessarily prevent such organization from being exempt as an organization organized and operated exclusively for charitable purposes. The fact that an organization, in carrying out its primary purpose, advocates social or civic changes or presents opinion on controversial issues with the intention of molding public opinion or creating public sentiment to an acceptance of its views does not preclude such organization from qualifying under section 501(c)(3) so long as it is not an "Action" organization of any one of the types described in paragraph (c)(3) of this section.

(3) "Educational" defined.

(A) In general. - The term "Educational", as used in section 501(c)(3), relates to -

(i) The instruction or training of the individual for the purpose of improving or developing his capabilities; or

(ii) The instruction of the public on subjects useful to the individual and beneficial to the community.

An organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion. On the other hand, an organization is not educational if its principal function is the mere presentation of unsupported opinion.

(B) Examples of educational organizations. - The following are examples of organizations which, if they otherwise meet the requirements of this section, are educational:

Example 1. - An organization, such as a primary or secondary school, a college, or a professional or trade school, which has a regularly scheduled curriculum, a regular faculty, and a regularly enrolled body of students in attendance at a place where the educational activities are regularly carried on.

Example 2. - An organization whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs. Such programs may be on radio or television.

Example 3. - An organization which presents a course of instruction by means of correspondence or through the utilization of television or radio.

Example 4. - Museums, zoos, planetariums, symphony orchestras, and other similar organizations.

(4) "Testing for Public Safety" defined. - The term "Testing for Public Safety", as used in section 501(c)(3), includes the testing of consumer products, such as electrical products, to determine whether they are safe for use by the general public.

(5) "Scientific" defined.

(A) Since an organization may meet the requirements of section 501(c)(3) only if it serves a public rather than a private interest, a "Scientific" organization must be organized and operated in the public interest. Research when taken alone is a word with various meanings; it is not synonymous with "Scientific"; and the nature of particular research upon the purpose which it serves. For research to be "Scientific", within the meaning of section 501(c)(3), it must be carried on in furtherance of a "Scientific" purpose. The determination as to whether research is "Scientific" does not depend on whether such research is classified as "Fundamental" or "Basic" as contrasted with "Applied" or "Practical". On the other hand, for purposes of the exclusion from unrelated business taxable income provided by section 512(b)(9), it is necessary to determine whether the organization is operated primarily for purposes of carrying on "Fundamental", as contrasted with "Applied", research.

(B) Scientific research does not include activities of a type ordinarily carried on as an incident to commercial or industrial operations, as, for example, the ordinary testing or inspection of materials or products or the designing or construction of equipment, buildings, etc.

(C) Scientific research will be regarded as carried on in the public interest -

(i) If the results of such research (including any patents, copyrights, processes, or formula resulting from such research) are made available to the public on a nondiscriminatory basis;

(ii) If such research is performed for the United States, or any of its agencies or instrumentalities, or for a State or political subdivision thereof; or

(iii) If such research is directed toward benefiting the public. The following are examples of scientific research which will be considered as directed toward benefiting the public, and, therefore, which will be regarded as carried on in the public interest:

(a) Scientific research carried on for the purpose of aiding in the scientific education of college or university students;

(b) Scientific research carried on for the purpose of obtaining scientific information, which is published in a treatise, thesis, trade publication or in any other form that is available to the interested public;

(c) Scientific research carried on for the purpose of discovering a cure for a disease; or

(d) Scientific research carried on for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development of, or retention of, an industry in the community or area. Scientific research described in this subdivision (c) will be regarded as carried on in the public interest even though such research is performed pursuant to a contract or agreement under which the sponsor or sponsors of the research have the right to obtain ownership or control of any patents, copyrights, processes, or formula resulting from such research.

(D) An organization will not be regarded as organized and operated for the purpose of carrying on scientific research in the public interest and, consequently, will not qualify under section 501(c)(3) as a "Scientific" organization, if -

(i) Such organization will perform research only for persons which are (directly or indirectly) its creators and which are not described in section 501(c)(3), or

(ii) Such organization retain (directly or indirectly) the ownership or control of more than an insubstantial portion of the patents, copyrights, processes, or formula resulting from its research and does not make patents, copyrights, processes, or formula available to the public. For purposes of this subdivision, a patent, copyright, process, or formula shall be considered as made available to the public if such patent, copyright, process, or formula is made available to the public on a nondiscriminatory basis. In addition, although one person is granted the exclusive right to the use of a patent, copy right, process, or formula, such patent, copyright, process, or formula shall be considered as made available to the public if the granting of such exclusive right is the only practicable manner in which the patent, copyright, process, or formula can be utilized to benefit the public. In such a case, however, the research from which the patent, copyright, process, or formula resulted will be regarded as carried on in the public interest (within the meaning of subdivision (C) of this subparagraph) only if it is carried on for a person described in subdivision (C)(ii) of this subparagraph or if it is scientific research described in subdivision (C)(iii) of this subparagraph.

(E) The fact that any organization (including a college, university, or hospital) carries on research which is not in furtherance of an exempt purpose described in section 501(c)(3) will not preclude such organization from meeting the requirements of section 501(c)(3) so long as the organization meets the organizational test and is not operated for the primary purpose of carrying on such research (see paragraph (e) of this section, relating to organizations carrying on a trade or business). See paragraphs (a)(5) of § 1.513-2, with

respect to research which constitutes an unrelated trade or business, and section 512(b)(7)(8), and (9), with respect to income derived from research which is excludable from the tax on unrelated business income.

(F) The regulations in this subparagraph are applicable with respect to taxable years beginning after December 31, 1960.

(e) Organizations carrying on trade or business.

(1) In general. - An organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated for the primary purpose of carrying on an unrelated trade or business, as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3) even though it has certain religious purposes, its property is held in common, and its profits do not inure to the benefit of individual members of the organization. See, however, section 501(d) and § 1.501(d)-1, relating to religious and apostolic organizations.

(2) Taxation of unrelated business income. - For provisions relating to the taxation of unrelated business income of certain organizations described in section 501(c)(3), see sections 511 to 515, inclusive, and the regulations thereunder.

(f) Applicability of regulations in this section. - The regulations in this section are, except as otherwise expressly provided, applicable with respect to taxable years beginning after July 26, 1959. For the rules applicable with respect to taxable years beginning before July 27, 1959, see 26 CFR (1939) 39.101(6)-1 (Regulations 118) as made applicable to the Code by Treasury Decision 6091, approved August 16, 1954 (19 F.R. 5167; C. B. 1954-2, 47). Reg. Section 1.501(c)(3)-1.

APPENDIX B

This list of nonprofit charitable organizations which may be exempt from taxation under the Internal Revenue Code is intended to illustrate application of these terms and is not intended to be a comprehensive listing.

(A) 501(c)(3) Organizations.

(1) Religious
Churches

Church affiliated colleges

Sermon publishing organizations that apply proceeds to purchase of materials for theology school libraries.

(2) Educational, literary or scientific.

- Primary and secondary schools
Colleges or universities
Professional or trade schools
Private schools (Must have a racially nondiscriminatory admissions policy)
- Teachers travel study groups
Historical exposition organizations
Engineering societies engaged in scientific research
Abortion counseling organizations
Sterilization information organizations
Credit union educational organizations
School Accreditation organizations
Organizations formed to provide work experience to students
Anthropological research organizations
Educational, cultural and public interest television programming organizations
- Training program product sales organizations
Educational day care organizations
Political educational organizations (must not solicit for or endorse candidates)
- (3) Public safety.
Traffic safety organizations
Organizations which inspect and test for public safety
- (4) Prevention of cruelty to children or animals.
- (5) Fostering national or international amateur sports competition.
- (6) Charitable.
Nonprofit hospitals
Health care and maintenance organizations
Drug Clinics
Alcoholic treatment organizations
Organizations that provide aid to the blind
Public interest law firms
Nonprofit legal aid societies
Prisoner rehabilitation organizations
Housing organizations which provide specially designed housing for the elderly or handicapped
Honor Societies
Volunteer fire company
Disaster service organizations
Racial discrimination prevention organizations
Aid to senior citizen organizations
Aid to immigrants organizations
Organizations formed to promote civic pride
- (b) 501(c)(4) Organizations.
- (1) Civil leagues.
Homeowner's association
Garden clubs

Women's vacation and rest home
Bus transportation organizations (providing relief for regular bus service)

Environmental protection organizations
Organization involved in processing of consumer complaints

(2) Nonprofit local employees' associations.

(c) 501(c)(8) Organizations. - Fraternal beneficiary societies (must operate) under the lodge system and have an established system for payment of benefits.

(d) 501(c)(10) Organization.

(1) Fraternal beneficiary societies (must operate) under the lodge system and give its net earnings solely for religious, charitable, scientific, literary, educational and fraternal purposes.

(e) 501(C)(19) Organizations. - Veteran's organizations (membership must consist of seventy-five (75%) war veterans and substantially all of the remainder must be veterans, cadets, or spouses, widows or widowers of war veterans. They must also be organized in the United States).

(f) 501(d) Organizations. - Religious and apostolic organizations.

Bill Tax, Bingo 110-16

H. B. 4326

(By Delegate Grubb)

(Introduced January 27, 1992; referred to the
Committee on Government Organization then the Judiciary)

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9
10 A BILL to amend and reenact section six, article seven, chapter
11 sixty-four of the code of West Virginia, one thousand nine
12 hundred thirty-one, as amended, relating to authorizing the
13 state tax commissioner to promulgate legislative rules
14 relating to bingo.

15 Be it enacted by the Legislature of West Virginia:

16 That section six, article seven, chapter sixty-four of the
17 code of West Virginia, one thousand nine hundred thirty-one, as
18 amended, be amended and reenacted, to read as follows:

19 ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF TAX AND REVENUE TO
20 PROMULGATE LEGISLATIVE RULES.

21 §64-7-6. Tax department.

22 (a) The legislative rules filed in the state register on the
23 fifth day of January, one thousand nine hundred eighty-four,
24 relating to the state tax commissioner (appraisal of property for

1 periodic statewide reappraisals for ad valorem property tax
2 purposes), are authorized with the amendments set forth below:

3 On page 8, section 11.04 (b)(2), definition of "Active Mining
4 Property," at the end of the first paragraph following the
5 period, by adding the following: "In the application of the
6 herein provided valuation formula on 'active mining property,'
7 the appropriate formula calculation will be based upon the actual
8 market to which the coal from that tract and seam is currently
9 being sold, whether it is 'metallurgical' or 'steam'."

10 On page 9, section 11.04 (b)(3), definition of "Active
11 Reserves," at the end of the subsection, following the period, by
12 adding the following: "In the application of the herein provided
13 valuation formula on 'active reserves,' the appropriate formula
14 calculation will be based upon the actual market to which the
15 coal from that tract and seam is currently being sold, whether it
16 is 'metallurgical' or 'steam'."

17 On page 11, section 11.04 (b)(11), definition of "Mineable
18 Coal," by striking the subsection and substituting in lieu
19 thereof the following: "(11) Mineable Coal. Coal which can be
20 mined under present day mining technology and economics."

21 On page 25, section 11.04 (c)(2)(C), entitled "Property Tax
22 Component," by striking the subsection and inserting in lieu
23 thereof the following: "(C) Property Tax Component -- This
24 component will be derived by multiplying the assessment rate by
25 the statewide average of tax rates on Class III property."

1 On page 30, section 11.04 (c)(4), entitled "Valuation of
2 Mined-Out/Unmineable/Barren Coal Properties," by striking the
3 numbers "\$5.00" and inserting in lieu thereof the following:
4 "\$1.00."

5 On page 31, section 11.04 (c)(5)(B), by striking the words
6 and numbers "Five Dollars (\$5.00)" and inserting in lieu thereof
7 the following: "One Dollar (\$1.00)."

8 On page 53, section 11.05 (h) by striking the symbol and
9 figures "(\$5.00)" and inserting in lieu the following:
10 "(\$1.00)."

11 On page 73, section 11.06 (h) by striking the symbol and
12 figures "\$5.00" and inserting in lieu the following: "\$1.00."

13 On page 81, section 11.07 (e)(15)(B)(4) at the end of the
14 second sentence remove the period after the word "property" and
15 insert the words "unless the land is used for some other purpose
16 in which case it will be taxed according to its actual use."

17 On page 86, section 11.07 (k) delete all of subsection (k).

18 On page 110, section 11.08 (c)(4) by striking the symbol and
19 figures "\$5.00" and inserting in lieu thereof the following:
20 "\$1.00."

21 On page 111, section 11.08 (c)(5)(B) by striking the symbol
22 and figures "\$5.00" and inserting in lieu thereof the following:
23 "\$1.00."

24 On page 115, section 11.09 (a)(3) in the first sentence,
25 insert after the word "land" the words "excluding farmland."

1 (b) The legislative rules filed in the state register on the
2 twenty-eighth day of September, one thousand nine hundred
3 eighty-four, relating to the state tax commissioner (estimated
4 personal income tax), are authorized with the amendments set
5 forth below:

6 55.02(a)(2)(on page 182.2) line 18, after the word
7 "profession" strike the words "on his own account" and the
8 comma(,).

9 55.12(b)(1)(page 182.35) at the end of the section, change
10 the period to a comma, and add the following language: "and in
11 the case of a court appointed agent, a copy of the court order of
12 appointment is sufficient."

13 55.12(c)(page 182.36) after the word "for," strike the word
14 "erroneous."

15 (c) The legislative rules filed in the state register on the
16 twenty-eighth day of September, one thousand nine hundred
17 eighty-four, modified by the state tax commissioner to meet the
18 objections of the legislative rule-making review committee and
19 refiled in the state register on the fourteenth day of November,
20 one thousand nine hundred eighty-four, and on the twenty-first
21 day of March, one thousand nine hundred eighty-five, relating to
22 the state tax commissioner (estimated corporation net income
23 tax), are authorized.

24 (d) The legislative rules filed in the state register on the
25 twelfth day of March, one thousand nine hundred eighty-five,

1 relating to the state tax commissioner (identification and
2 appraisal of farmland subsequent to the base year of statewide
3 reappraisal), are authorized and directed to be promulgated with
4 the following amendments:

5 Title page, Subject; following the word "Farmland," insert
6 the words "and of Structures Situated Thereon."

7 Page i, Subject; following the word "Farmland," insert the
8 words "and of Structures Situated Thereon."

9 Page i, TABLE OF CONTENTS, Section 10; following the words
10 "Valuation of Farmland" add the words "and of Structures Situated
11 Thereon."

12 Page 10.1, Title; following the word "FARMLAND" insert the
13 words "AND STRUCTURES SITUATED THEREON."

14 Page 10.1, Section 10, Title; following the word "Farmland"
15 add the words "and Structures Situated Thereon."

16 Page 10.1, Section 10.01(b); following the word "farmland"
17 insert the words "and structures situated thereon."

18 Page 10.2, Section 10.02(a), first sentence; following the
19 word "farmland" insert the words "and structures situated
20 thereon."

21 Page 10.3, Section 10.02(b), first sentence; following the
22 word "farmland" insert the words "and structures situated
23 thereon." Delete the words "for purposes of the statewide
24 reappraisal."

1 Page 10.3, Section 10.02(b), last sentence; following the
2 word "farmland" insert the words "and structures situated
3 thereon."

4 Page 10.8, Section 10.04(5)(B), last sentence; delete the
5 period and add "or the incapability to be adapted to alternative
6 uses."

7 Page 10.9, Section 10.04(6), first sentence; following the
8 words "land currently being used" insert the words "as part of a
9 farming operation."

10 Page 10.9, Section 10.04(6), following the last sentence; add
11 the sentence "For the purposes of this definition, 'contiguous
12 tracts' are farmlands which are in close proximity, but not
13 necessarily adjacent: Provided, That all such contiguous tracts
14 are operated as part of the same farm management plan."

15 Page 10.10, Section 10.04(8), is amended to read in its
16 entirety as follows:

17 "(8) Farm buildings. -- The term 'farm buildings' shall mean
18 structures which directly contribute to the operation of the
19 farm, and shall include tenant houses and quarters furnished farm
20 employees without rent as a part of the terms of their
21 employment."

22 Page 10.11, Section 10.04; delete the word "November" and
23 insert in lieu thereof the word "September." Delete the period
24 following the word "valuation" and add the words, "for the
25 assessment year beginning July first of each year."

1 Page 10.11, Section 10.04, insert the following subdivision;
2 "(12) Application Form: The application form required to be
3 filed with the assessor on or before September first of each year
4 shall require certification that the farm complies with criteria
5 set forth in Section 10.05(c) of these regulations, and renewal
6 applications from year to year shall be sufficient upon statement
7 certifying that no change has been made in the use of farm
8 property which would disqualify 'farm use' classification for
9 assessment purposes." Renumber the subdivisions of Section 10.04
10 following the new 10.04(12); formerly 10.04(12) through
11 10.04(28), to 10.04(13) through 10.04(29), respectively.

12 Page 10.14, Section 10.04(28) (formerly 10.04(27)); following
13 the words "woodland products" insert a comma and the words "such
14 as nuts or fruits harvested" and add a comma following the words
15 "human consumption" on Page 10.15.

16 Page 10.16, Section 10.05, subsection (a), following the
17 words "land is used for farm purposes" by striking the period and
18 inserting in lieu thereof a colon and the following: "Provided,
19 That the true and actual value of all farm used, occupied and
20 cultivated by their owners or bona fide tenants shall be arrived
21 at according to the fair and reasonable value of the property for
22 the purpose for which it is actually used regardless of what the
23 value of the property would be if used for some other purpose;
24 and that the true and actual value shall be arrived at by giving
25 consideration to the fair and reasonable income which the same

1 might be expected to earn under normal conditions in the locality
2 wherein situated, if rented: Provided, however, That nothing
3 herein shall alter the method of assessment of lands or minerals
4 owned by domestic or foreign corporations."

5 Page 10.16, Section 10.05(b), first clause; following the
6 words "following factors shall be" insert the words "indicative
7 of but not conclusive" and delete the word "considered."

8 Page 10.16, Section 10.05(b)(2); delete the period and add
9 the words "such as soil conservation, farmland preservation or
10 federal farm lending agencies."

11 Page 10.17, Section 10.05(b)(7); delete the section and
12 insert in lieu thereof the words "(7) Whether or not the farmer
13 practices 'custom farming' on the land in question."

14 Page 10.17, Section 10.05(b)(9); following the word "type"
15 add a comma and insert the word "utility."

16 Page 10.17, Section 10.05(b)(11), first sentence; following
17 the word "sales" insert the words "for nonfarm uses."

18 Page 10.17, Section 10.05(b)(12)(A); following the words
19 "part of" insert the words "or appurtenant to."

20 Page 10.17, Section 10.05(b)(12)(B); following the words
21 "contiguous to" insert the words "or operated in common with."

22 Page 10.18, Section 10.05, subsection (c), the first sentence
23 of which is amended in its entirety to read as follows:
24 "Qualifying farmland and the structures situated thereon shall be
25 subject to farm use valuation, with primary consideration being

1 given to the income which the property might be expected to earn,
2 in the locality wherein situate, if rented."

3 Page 10.18, Section 10.05(b)(12)(B); delete the semicolons
4 and the words "it was purchased at the same time as the tract so
5 used." Delete the period following the word "purposes" and add the
6 words "or any nonfarm use."

7 Page 10.19, Section 10.05(c)(2); following the words
8 "Provided, That no" delete the word "reason" and insert in lieu
9 thereof the words "individual event."

10 Page 10.20, Section 10.05(c)(4)(C); following the words
11 "(1,000) minimum production value" insert the words "or the small
12 farm five hundred dollars (\$500) minimum production and sale."

13 Page 10.23, Section 10.05(d)(3)(B), third sentence; following
14 the word "If" insert the words "timber from." Delete the period
15 following the word "purpose" and add the words "or is being
16 converted to farm production uses."

17 Page 10.26, Section 10.05(f)(2) is amended in its entirety to
18 read as follows:

19 "(2) Farm buildings. -- Rental value of farm buildings and
20 other improvements on the farmland shall be valued by determining
21 the replacement cost of the building or structure by usual farm
22 construction practices, and farm labor standards and subtracting
23 therefrom depreciation.¹ Both of these determinations shall be
24 made in accordance with the tax department's real property
25 appraisal manual² as filed in the state register in accordance

1 with chapter 29A of the code of West Virginia, 1931, as amended,
2 and as it relates to agricultural buildings and structures. One
3 (1) acre of land shall be assigned to all buildings as a unit
4 situate on the property, regardless of the actual acreage
5 occupied by such buildings and shall be appraised at its farm-use
6 valuation based on the highest class of farmland present on the
7 farm."

8 Page 10.28, Section 10.05(f)(3)(B)(1); following the words
9 "or more of the" insert the word "usual."

10 Page 10.28, Section 10.05(f)(3)(B)(2); following the words
11 "(50%) of the" insert the word "usual."

12 Page 10.29, Section 10.05(f)(3)(C)(1)(a); following the words
13 "(50%) or more of the" insert the word "usual."

14 Page 10.29, Section 10.05(f)(3)(C)(1)(b); following the words
15 "(50%) of the" insert the word "usual."

16 Page 10.31, Section 10.05(f)(3)(C)(2)(b); following the last
17 sentence insert the sentence "An individual employed other than
18 in farming is not an unincorporated business."

19 Page 10.35, Section 10.07, Title; following the word
20 "Farmland" insert the words "and Structures Situated Thereon."

21 Page 10.35, Section 10.07(a), first sentence; following the
22 word "farmland" insert the words "and structures situated
23 thereon."

24 Page 10.46, Subject; following the word "Farmland" insert the
25 words "and Structures Situated Thereon."

1 (e) The legislative rules filed in the state register on the
2 twenty-second day of May, one thousand nine hundred eighty-five,
3 relating to the state tax commissioner (rules governing the
4 operation of a statewide electronic data processing system
5 network, to facilitate administration of the ad valorem property
6 tax on real and personal property), are authorized.

7 (f) The legislative rules filed in the state register on the
8 twenty-sixth day of March, one thousand nine hundred eighty-six,
9 relating to the state tax commissioner (listing of interests in
10 natural resources for the first statewide reappraisal; provision
11 for penalties), are authorized.

12 (g) The legislative rules filed in the state register on the
13 twenty-sixth day of March, one thousand nine hundred eighty-six,
14 modified by the state tax commissioner to meet the objections of
15 the legislative rule-making review committee and refiled in the
16 state register on the twelfth day of February, one thousand nine
17 hundred eighty-seven, relating to the state tax commissioner
18 (review of appraisals by county commissions sitting as
19 administrative appraisal review boards), are authorized.

20 (h) The legislative rules filed in the state register on the
21 twenty-sixth day of March, one thousand nine hundred eighty-six,
22 modified by the state tax commissioner to meet the objections of
23 the legislative rule-making review committee and refiled in the
24 state register on the twelfth day of February, one thousand nine
25 hundred eighty-seven, relating to the state tax commissioner

1 (review of appraisals by a circuit court on certiorari), are
2 authorized with the following amendment:

3 On page 3, §18.3.1 is stricken in its entirety and a new
4 §18.3.1 is inserted in lieu thereof to read as follows:

5 "18.3.1 Who May Request Review. -- The property owner, Tax
6 Commissioner, protestor or intervenor may request the county
7 commission to certify the evidence and remove and return the
8 record to the circuit court of the county on a writ of
9 certiorari. Parties to the proceeding wherein review by the
10 circuit court is sought shall pay costs and fees as they are
11 incurred: Provided, That the circuit court upon rendering
12 judgment or making any order may award costs to any party in
13 accordance with the provisions of W. Va. Code §53-3-5."

14 (i) The legislative rules filed in the state register on the
15 twenty-sixth day of March, one thousand nine hundred eighty-six,
16 modified by the state tax commissioner to meet the objections of
17 the legislative rule-making review committee and refiled in the
18 state register on the twelfth day of February, one thousand nine
19 hundred eighty-seven, relating to the state tax commissioner
20 (administrative review of appraisals by the state tax
21 commissioner), are authorized.

22 (j) The legislative rules filed in the state register on the
23 eighteenth day of August, one thousand nine hundred eighty-six,
24 modified by the state tax commissioner to meet the objections of
25 the legislative rule-making review committee and refiled in the

1 state register on the twelfth day of February, one thousand nine
2 hundred eighty-seven, relating to the state tax commissioner
3 (additional review and implementation of property appraisals),
4 are authorized.

5 (k) The legislative rules filed in the state register on the
6 eleventh day of August, one thousand nine hundred eighty-six,
7 relating to the state tax commissioner (guidelines for assessors
8 to assure fair and uniform personal property values), are
9 authorized.

10 (l) The legislative rules filed in the state register on the
11 eighteenth day of August, one thousand nine hundred eighty-six,
12 modified by the state tax commissioner to meet the objections of
13 the legislative rule-making review committee and refiled in the
14 state register on the tenth day of December, one thousand nine
15 hundred eighty-six, relating to the state tax commissioner
16 (registration of transient vendors), are authorized.

17 (m) The legislative rules filed in the state register on the
18 fourth day of February, one thousand nine hundred eighty-six,
19 modified by the state tax commissioner to meet the objections of
20 the legislative rule-making review committee and refiled in the
21 state register on the fourteenth day of January, one thousand
22 nine hundred eighty-seven, relating to the state tax commissioner
23 (business and occupation tax), are authorized.

24 (n) The legislative rules filed in the state register on the
25 fourteenth day of August, one thousand nine hundred eighty-seven,

1 modified by the state tax commissioner to meet the objections of
2 the legislative rule-making review committee and refiled in the
3 state register on the fourth day of November, one thousand nine
4 hundred eighty-seven, relating to the state tax commissioner
5 (telecommunications tax), are authorized.

6 (o) The legislative rules filed in the state register on the
7 fourteenth day of August, one thousand nine hundred eighty-seven,
8 relating to the state tax commissioner (business franchise tax),
9 are authorized.

10 (p) The legislative rules filed in the state register on the
11 seventeenth day of August, one thousand nine hundred
12 eighty-seven, modified by the state tax commissioner to meet the
13 objections of the legislative rule-making review committee and
14 refiled in the state register on the twenty-second day of
15 January, one thousand nine hundred eighty-eight, relating to the
16 state tax commissioner (consumers sales and service tax and use
17 tax), are authorized.

18 (q) The legislative rules filed in the state register on the
19 fourteenth day of August, one thousand nine hundred eighty-seven,
20 modified by the state tax commissioner to meet the objections of
21 the legislative rule-making review committee and refiled in the
22 state register on the thirteenth day of January, one thousand
23 nine hundred eighty-eight, relating to the state tax commissioner
24 (appraisal of property for periodic statewide reappraisals for ad
25 valorem property tax purposes), are authorized.

1 (r) The legislative rules filed in the state register on the
2 fourteenth day of August, one thousand nine hundred eighty-seven,
3 modified by the state tax commissioner to meet the objections of
4 the legislative rule-making review committee and refiled in the
5 state register on the twelfth day of January, one thousand nine
6 hundred eighty-eight, relating to the state tax commissioner
7 (severance tax), are authorized.

8 (s) The legislative rules filed in the state register on the
9 second day of September, one thousand nine hundred eighty-eight,
10 modified by the state tax commissioner to meet the objections of
11 the legislative rule-making review committee and refiled in the
12 state register on the twenty-fourth day of February, one thousand
13 nine hundred eighty-nine, relating to the state tax commissioner
14 (solid waste assessment fee), are authorized.

15 (t) The legislative rules filed in the state register on the
16 twelfth day of August, one thousand nine hundred eighty-eight,
17 modified by the state tax commissioner to meet the objections of
18 the legislative rule-making review committee and refiled in the
19 state register on the twenty-first day of September, one thousand
20 nine hundred eighty-eight, relating to the state tax commissioner
21 (electronic data processing system network for property tax
22 administration), are authorized.

23 (u) The legislative rules filed in the state register on the
24 nineteenth day of September, one thousand nine hundred
25 eighty-eight, modified by the state tax commissioner to meet the

1 objections of the legislative rule-making review committee and
2 refiled in the state register on the twenty-fourth day of
3 February, one thousand nine hundred eighty-nine, relating to the
4 state tax commissioner (exemption of property from ad valorem
5 property taxation), are authorized.

6 (v) The legislative rules filed in the state register on the
7 sixteenth day of September, one thousand nine hundred
8 eighty-eight, modified by the state tax commissioner to meet the
9 objections of the legislative rule-making review committee and
10 refiled in the state register on the thirteenth day of January,
11 one thousand nine hundred eighty-nine, relating to the state tax
12 commissioner (consumers sales and service tax and use tax), are
13 authorized.

14 (w) The legislative rules filed in the state register on the
15 twenty-third day of June, one thousand nine hundred eighty-nine,
16 relating to the state tax department (personal income tax), are
17 authorized.

18 (x) The legislative rules filed in the state register on the
19 twenty-ninth day of June, one thousand nine hundred eighty-nine,
20 relating to the state tax department (severance tax), are
21 authorized.

22 (y) The legislative rules filed in the state register on the
23 fourth day of August, one thousand nine hundred eighty-nine,
24 modified by the state tax department to meet the objections of
25 the legislative rule-making review committee and refiled in the

1 state register on the eleventh day of December, one thousand nine
2 hundred eighty-nine, relating to the state tax department (solid
3 waste assessment fee), are authorized.

4 (z) The legislative rules filed in the state register on the
5 fourteenth day of August, one thousand nine hundred eighty-nine,
6 modified by the department of tax and revenue to meet the
7 objections of the legislative rule-making review committee and
8 refiled in the state register on the twelfth day of December, one
9 thousand nine hundred eighty-nine, relating to the department of
10 tax and revenue (business franchise tax), are authorized.

11 (aa) The legislative rules filed in the state register on the
12 eleventh day of August, one thousand nine hundred eighty-nine,
13 modified by the department of tax and revenue to meet the
14 objections of the legislative rule-making review committee and
15 refiled in the state register on the eleventh day of December,
16 one thousand nine hundred eighty-nine, relating to the department
17 of tax and revenue (business and occupation tax), are authorized.

18 (bb) The legislative rules filed in the state register on the
19 fourteenth day of August, one thousand nine hundred eighty-nine,
20 modified by the department of tax and revenue to meet the
21 objections of the legislative rule-making review committee and
22 refiled in the state register on the nineteenth day of January,
23 one thousand nine hundred ninety, relating to the department of
24 tax and revenue (consumers sales and service tax and use tax),
25 are authorized with the amendments set forth below:

1 On page eight, Section 2.28, after the word "as" by inserting
2 the words "art, science,."

3 On pages eight and nine, Section 2.28.1, after the word
4 "intellectual" by deleting the word "or" and inserting in lieu
5 thereof the words "physical and."

6 On page nine, Section 2.28.2, by deleting the words "or
7 instruction."

8 On page nine, Section 2.28.2, after the word "training" by
9 adding the word "or."

10 On page nine, Section 2.28.2, by deleting the words "or any
11 portion of a school curriculum classified as physical education."
12 On page nine, by deleting all of Section 2.28.2.1.

13 On page nine, Section 2.28.2.2, by deleting the section
14 number.

15 On page nine, Section 2.28.2.2, by deleting the words "or
16 instruction."

17 On page nine, Section 2.28.2.2, after the word "training" by
18 adding the word "or."

19 On page nine, Section 2.28.2.2, after the word "conditioning"
20 by inserting a period and striking the remainder of the sentence.

21 On page one hundred twelve, Section 59.2, after the words
22 "sales of the service of cremation" by adding the words "sales on
23 perpetual care trust fund deposits."

24 And,

1 On page one hundred twenty-eight, Section 91.2, after the
2 words "include food" by inserting the following: ", as defined
3 in section 2.30 of this rule,."

4 (cc) The legislative rules filed in the state register on the
5 eleventh day of August, one thousand nine hundred eighty-nine,
6 modified by the department of tax and revenue to meet the
7 objections of the legislative rule-making review committee and
8 refiled in the state register on the eleventh day of December,
9 one thousand nine hundred eighty-nine, relating to the department
10 of tax and revenue (motor carrier road tax), are authorized.

11 (dd) The legislative rules filed in the state register on the
12 eleventh day of August, one thousand nine hundred eighty-nine,
13 modified by the department of tax and revenue to meet the
14 objections of the legislative rule-making review committee and
15 refiled in the state register on the eleventh day of December,
16 one thousand nine hundred eighty-nine, relating to the department
17 of tax and revenue (gasoline and special fuel excise tax), are
18 authorized.

19 (ee) The legislative rules filed in the state register on the
20 eleventh day of August, one thousand nine hundred eighty-nine,
21 modified by the department of tax and revenue to meet the
22 objections of the legislative rule-making review committee and
23 refiled in the state register on the eleventh day of December,
24 one thousand nine hundred eighty-nine, relating to the department
25 of tax and revenue (corporation net income tax), are authorized.

1 (ff) The legislative rules filed in the state register on the
2 eleventh day of August, one thousand nine hundred eighty-nine,
3 modified by the department of tax and revenue to meet the
4 objections of the legislative rule-making review committee and
5 refiled in the state register on the eleventh day of December,
6 one thousand nine hundred eighty-nine, relating to the department
7 of tax and revenue (soft drinks tax), are authorized.

8 (gg) The legislative rules filed in the state register on the
9 twenty-first day of February, one thousand nine hundred ninety-
10 one, relating to the state tax commissioner (business investment
11 and jobs expansion tax credit, corporations headquarters
12 relocation tax credit, and small business tax credit), are
13 authorized.

14 (hh) The legislative rules filed in the state register on the
15 twenty-second day of April, one thousand nine hundred ninety-one,
16 modified by the state tax commissioner to meet the objections of
17 the legislative rule-making review committee and refiled in the
18 state register on the sixteenth day of September, one thousand
19 nine hundred ninety-one, relating to the state tax commissioner
20 (bingo rules and regulations) are authorized.

21

22 NOTE: The purpose of this bill is to authorize the State Tax
23 Commissioner to promulgate legislative rules relating to bingo.

24
25 Strike-throughs indicate language that would be stricken from
26 the present law, and underscoring indicates new language that
27 would be added.



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(Plus all the volunteer
help we can get)

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STATE TAX DEPARTMENT
LEGAL DIVISION
93 FEB -3 AM 11:41
RECEIVED

TO: John Montgomery

AGENCY: State Tax Department

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: January 29, 1993

THE ATTACHED RULE FILED BY YOUR AGENCY HAS BEEN ENTERED INTO OUR COMPUTER SYSTEM. PLEASE REVIEW, PROOF AND RETURN IT WITH ANY CORRECTIONS. IF THERE ARE NO CORRECTIONS, PLEASE SIGN THIS MEMO AND RETURN IT TO THIS OFFICE. YOU WILL BE SENT A FINAL VERSION OF THE RULE FOR YOUR RECORDS.

PLEASE RETURN EITHER THE CORRECTED RULE OR THIS FORM WITHIN TEN (10) WORKING DAYS OF THE DATE YOU RECEIVED THIS REQUEST. CALL IF YOU HAVE ANY QUESTIONS.

SERIES: 16 TITLE: 110 State Tax Department

* THE ATTACHED RULE HAS BEEN REVIEWED AND IS CORRECT.

SIGNED: _____

TITLE OF PERSON SIGNING: _____

DATE: _____

* THE ATTACHED RULE HAS BEEN REVIEWED AND NEEDS CORRECTING. THE CORRECTIONS HAVE BEEN MARKED

SIGNED: John Montgomery

TITLE OF PERSON SIGNING: Attorney State Tax Division

DATE: 7/21/93

NOTE: IF YOU ARE NOT THE PERSON WHO HANDLES THIS RULE, PLEASE FORWARD TO THE CORRECT PERSON.