

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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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: 19

TITLE OF RULE BEING AMENDED: SOFT DRINKS TAX

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

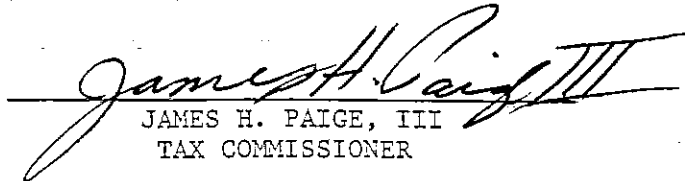
TITLE OF RULE BEING PROPOSED:

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(11), 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

3.80



State of West Virginia
Department of Tax and Revenue

Charleston 25305

GASTON CAPERTON
GOVERNOR

FILED

1992 APR 15 AM 8 51

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

CONSENT TO FILE RULE

April 10, 1992

To Whom It May Concern:

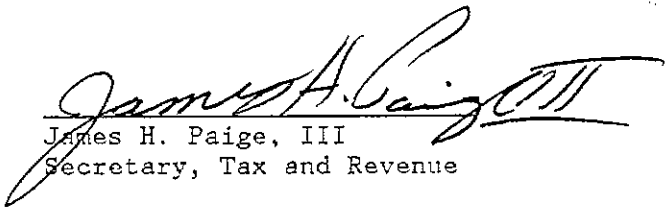
Title of Rule: Soft Drinks Tax

Title Number: 110

Series Number: 19

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 19
APRIL 15, 1992

FILED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

SOFT DRINKS TAX

§ 110-19-1. General.

1.1 **Type of regulation.** - These regulations are legislative regulations as defined in W. Va. Code § 29A-3-1 et seq.

1.2 **Scope.** - These legislative regulations explain and clarify the West Virginia Soft Drinks Tax, as stated in W. Va. Code § 11-19-1 et seq.

1.3 **Authority.** - These legislative regulations are issued under the authority of W. Va. Code § 11-10-5.

1.4 **Filing date.** - April 15, 1992.

1.5 **Effective date.** - April 15, 1992.

§ 110-19-2. **Definitions.** - As used in these regulations and unless the context clearly requires a different meaning, the following terms shall have the meaning ascribed herein, and shall apply in the singular or in the plural.

2.1 "Bottled soft drinks" shall include any and all nonalcoholic beverages, whether carbonated or not, such as soda water, ginger ale, Coca Cola, lime cola, Pepsi Cola, Dr. Pepper, root beer, carbonated water, orangeade, lemonade, fruit juice when any plain or carbonated water, flavoring or syrup is added, or any and all preparations commonly referred to as "soft drinks" of whatever kind, which are closed and sealed in glass, paper, or any other type of container, envelope, package or bottle, whether manufactured with or without the use of any syrup. The term "bottled soft drinks" shall not include fluid milk to which no flavoring has been added, or natural undiluted fruit juice or vegetable juice.

2.1.1 The term "bottled soft drinks" also does not include plain water that is not carbonated artificially, but which is naturally carbonated before it is removed from the ground. See also Section 3.3.4 of these regulations.

2.1.2 The term "nonalcoholic beverages" means and includes all beverages which are not among the alcoholic beverages defined in the West Virginia Code and regulations thereto, and which contain less than one half percent (.5%) alcohol by volume. Alcoholic beverages include "alcoholic liquor," "beer," "spirits" and "wine" as defined in W. Va. Code § 60-1-5; "fortified wine" as defined in W. Va. Code § 60-8-2; "nonintoxicating beer" as defined in W. Va. Code §§ 60-1-5 and 11-16-2; and any other beverage which contains at least one half percent (.5%) alcohol by volume. Nonalcoholic beverages, which are subject to the soft drink tax, are exempt from taxation or regulation by the Alcoholic Beverage Commission, and are exclusively subject to

the jurisdiction of the Department of Tax and Revenue. Examples of nonalcoholic beverages include near beer, malt coolers, and wine coolers when such beverages contain less than one half percent (.5%) alcohol by volume.

2.2 "Natural undiluted fruit juice" shall mean the liquid resulting from the pressing of fruit with or without sweetener being added, or the liquid resulting from the reconstitution of natural fruit juice concentrate by the restoration of water to dehydrated natural fruit juice with or without sweetener being added.

2.3 "Natural undiluted vegetable juice" shall mean the liquid resulting from the pressing of vegetables with or without sweetener being added or the liquid resulting from the reconstitution of natural vegetable juice concentrate by the restoration of water to dehydrated natural vegetable juice with or without sweetener being added.

2.4 "Sweetener" shall mean sugar only, artificial or natural, which singularly flavors the taste of a natural undiluted fruit juice or natural undiluted vegetable juice.

2.5 "Soft drink syrups and powders" shall include the compound mixture or the basic ingredients, whether dry or liquid, practically and commercially usable in making, mixing or compounding soft drinks by the mixing thereof with carbonated or plain water, ice, fruit, milk or any other product suitable to make a soft drink, among such syrups being such products as Coca Cola syrup, Chero Cola syrup, Pepsi Cola syrup, Dr. Pepper syrup, root beer syrup, Nu-Grape syrup, lemon syrup, vanilla syrup, chocolate syrup, cherry smash syrup, rock candy syrup, simple syrup, chocolate drink powder, malt drink powder, or any other prepared syrups or powders sold or used for the purpose of mixing soft drinks commercially at soda fountains, restaurants or similar places as well as those powder bases prepared for the purpose of domestically mixing soft drinks such as Kool Aid, Oh Boy drink, Tip Top, Miracle Aid and all other similar products.

2.5.1 Example. - Although not specifically listed in the definition of "soft drink syrups and powders," Tang would be classified as a soft drink powder. Tang is a powder base prepared for the purpose of domestically mixing a soft drink similar to Kool Aid. The fact that a soft drink product such as Tang may often be consumed at breakfast would not exempt it from the tax, any more than soft drinks such as Pepsi Cola would be exempt when they are consumed at breakfast. The taxability of soft drink products is not affected by how or when they may be used. Nor does the fact that Tang has vitamin C added to it cause it to be exempt, any more than soft drinks such as Coca Cola would be exempt if they were fortified with vitamins.

2.6 "Simple syrup" shall mean the making, mixing, compounding or manufacturing, by dissolving sugar and water or any other mixtures that will create simple syrup to which may be or may not be added concentrates or extracts.

2.7 "Person" shall mean and include an individual, firm, partnership, association or corporation.

2.8 "Wholesale dealer" includes only those persons who sell any bottled soft drink or soft drink syrup to retail dealers for the purpose of resale.

2.9 "Retail dealer" includes every person other than a wholesale dealer mixing, making, compounding or manufacturing any drink from a soft drink syrup or powder base, or a person selling such syrup or powder.

2.10 "Distributor" shall mean any person who manufactures, bottles, produces or purchases for sale to retail dealers any bottled soft drink or soft drink syrup.

2.11 "Commissioner" means the State Tax Commissioner, and where the meaning of the context requires, all deputies and employees duly authorized by him.

2.12 "Domestic use" shall mean for use exclusively in the home.

2.13 "Commercial use" shall mean for use by restaurants, drive-ins, theaters, canteens, schools, hospitals or any other vendor offering finished drinks to the consumer.

2.14 "Tax stamps or indicia" shall mean any soft drink stamp authorized by the Commissioner to serve as such stamp, and shall be of the design and color prescribed by the Commissioner.

2.15 "Tax crowns" shall mean any caps, lids, labels, cartons, ends or crowns authorized by the Commissioner and shall be of the design prescribed by the Commissioner.

2.15.1 Any caps, lids, labels, cartons, ends or crowns which do not comply with the Commissioner's design specifications shall not be considered tax crowns. See Section § 6.7.5.1.

2.16 "Stamped soft drinks" means that the West Virginia tax stamp or tax crown has been affixed to the soft drink lid or neck of the container.

2.17 "Unstamped soft drinks" means that the West Virginia tax stamp or tax crown has not been affixed to the soft drink container.

2.18 "Tax" or "taxes" means and includes additions to tax, penalties and interest, unless the intention to give the same or more limited meaning is disclosed by the context.

2.19 "Taxpayer" means and includes any person required to file a report or return for the soft drinks tax, and any person liable for payment of the soft drinks tax.

§ 110-19-3. Excise Tax On Bottled Soft Drinks, Syrups And Dry Mixtures; Disposition Thereof.

3.1 An excise tax is levied and imposed by W. Va. Code § 11-19-2 upon the sale, use, handling or distribution of all bottled soft drinks, soft drink syrups and powders, whether manufactured within or without this State, as follows:

3.1.1 On each bottled soft drink, a tax of one cent (\$.01) on each sixteen and nine-tenths (16.9) fluid ounces, or fraction thereof, or on each one-half (.5) liter, or fraction thereof contained therein.

3.1.2 On each gallon of soft drink syrup, a tax of eighty cents (\$.80), and in like ratio on each part gallon thereof, or on each four (4) liters of soft drink syrup a tax of eighty-four cents (\$.84), and in like ratio on each part four (4) liters thereof.

3.1.3 On each ounce by weight of dry mixture (powder) or fraction thereof used for making soft drinks, a tax of one cent (\$.01) or on each 28.35 grams, or fraction thereof, a tax of one cent (\$.01).

3.2 Any person manufacturing or producing within this State any bottled soft drink or soft drink syrup or powder for sale within this State and any distributor, wholesale dealer or retail dealer or any other person who is the original consignee of any bottled soft drink or soft drink syrup or powder manufactured or produced outside this State, or who brings such drinks or syrups or powders into this State, shall be liable for the excise tax imposed. The excise tax imposed shall not be collected more than once in respect to any bottled soft drink or soft drink syrup manufactured, sold, used or distributed in this State.

3.2.1 **Base products.** - Base products such as hot chocolate flavored drink mix, flavored milk shake bases, concentrated products to which milk or other liquid (including water) is added to make a syrup used to complete a soft drink, and all like items or products, will be taxed as syrups.

3.2.2 **Powders.** - Powders includes compressed powders, crystals, granules or tablets from which soft drinks can be made.

3.2.3 **Powders converted to syrup.** - Whenever a powder is converted to a syrup, the tax per ounce on such powder will be computed in direct ratio to the quantity of ready-to-use syrup produced. An example is that of cocoa powder - generally, one (1) pound of cocoa powder is used in the manufacture of a gallon of chocolate syrup. Because the tax on a gallon of syrup is eighty cents (\$.80) and sixteen (16) ounces of powder is required to produce one (1) gallon of syrup, the tax levied in this instance would be at the rate of five cents (\$.05) per ounce on the powder.

3.2.4 **Powders converted to soft drinks.** - When a powder is used to make a soft drink without being converted into a syrup, the rate of tax will be one cent (\$.01) per ounce, or fraction thereof, of the powder weight.

3.3 **Exemptions.** - The following are exempt from the soft drinks tax:

3.3.1 Fluid milk to which no flavoring has been added.

3.3.2 Natural undiluted fruit juice or vegetable juice.

3.3.2.1 This exemption only applies to such juices which are one hundred percent (100%) pure, and which contain no flavorings, preservatives, carbonation or any other additives other than artificial or natural sweeteners.

Examples:

3.3.2.1.a Even if orange juice is labeled as "100% pure," it would not be exempt if in fact it is not 100% pure. Orange juice which is 100% pure, except for the addition of more water to it than would occur if the juice were freshly squeezed, would be diluted with water, and so would not be "natural undiluted fruit juice" and thus would not be exempt.

3.3.2.1.b Even if tomato juice is otherwise pure, it would not be 100% pure if salt or any other flavoring or substance other than sweeteners has been added subsequent to the harvesting of the tomatoes used to produce the juice.

3.3.2.1.c Fruit juice "sparklers" which sparkle as a result of artificial carbonation are not exempt even if otherwise pure.

3.3.2.1.d A mixture of two or more juices, such as orange and pineapple juices, would be exempt only if the resulting product consists solely of 100% pure juices and contains no additives of any kind other than sweeteners.

3.3.3 Plain water which is uncarbonated.

3.3.4 Water which is naturally carbonated before it is removed from the ground. See also Section 2.1.1 of these regulations.

3.3.4.1 In order for water to be considered naturally carbonated, all of the carbon dioxide which is in the water when it is marketed must have been (1) removed from the same ground as the water and (2) present in the water before the water was removed from the ground. Even if the carbon dioxide was removed from the same ground as the water and was present to some degree in the water before the water is removed from the ground, the water would not be naturally carbonated if any additional amounts of carbon dioxide are added to the water to reach a desired level of carbonation.

§ 110-19-4. Reserved For Future Use.

§ 110-19-5. Affixing Of Tax Stamps Or Tax Crowns.

5.1 The payment of the taxes herein provided shall be evidenced by the affixing of soft drink tax stamps or tax crowns to the original containers or bottles in which any soft drink or syrup is placed, received, stored or handled. Such stamps or crowns, of the appropriate denomination, shall be affixed to each container of syrup and to each bottled soft drink by the person, who under the provisions of W. Va. Code § 11-19-1 et seq. and this regulation, is first required to pay the tax thereon, within twenty-four (24) hours after such person has such bottled soft drink or syrup in his possession for the first time. The provisions of this Section 5.1 shall not apply to syrup used by bottlers in the manufacture of bottled soft drinks, or to bottled soft drinks or syrups which are transported through this State and which are not sold, delivered, used or stored herein, or to any bottled drink or syrup which is manufactured in this State and sold to a purchaser outside this State.

5.2. Alternate method to pay soft drink tax on certain bottled drinks, ades, punches, powder bases, and non-carbonated fruit drinks. - All soft drinks are required to have the appropriate tax stamp or indicia or tax crown affixed to the container except items on which the wholesaler, distributor or retail dealer is permitted to file a report and pay the tax on the fifteenth (15th) day of the month following the month of receipt or manufacturing of certain bottled drinks, ades, punches, powder bases, powdered drink mixes, low-alcohol brewed beverages such as near beer, and non-carbonated fruit drinks as referenced in Section 14 of these regulations.

5.3 Except as otherwise provided in W. Va. Code § 11-19-4 and in this Section 5 of this regulation, it shall be unlawful for any person to sell, use, handle or distribute any bottled soft drink or soft drink syrup to which the required tax stamps or tax crowns are not affixed, and any person who shall violate this provision shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500), or by imprisonment for not more than six (6) months, or by both such fine and imprisonment.

§ 110-19-5a. Cancellation And Removal Of Stamps.

5a.1 Any person subject to the tax imposed by W. Va. Code § 11-19-1 et seq. and this regulation who affixes a soft drink stamp to a container shall be required to immediately cancel the stamp by writing or marking initials thereon and the date upon which the stamp was affixed. When any container to which a stamp has been affixed is emptied, the person emptying the same or on whose behalf the same has been emptied shall be required to immediately remove or deface the tax stamp thereon.

§ 110-19-5b. Disposition Of Unused Crowns; Penalty For Violation.

5b.1 Unused tax crowns upon which the tax imposed by W. Va. Code § 11-19-1 et seq. and this regulation has not been paid and which the original purchaser has not used and does not intend to use, and which are fit for use, shall be disposed of in the following manner only:

5b.1.1 By returning same to the manufacturer thereof and receiving from such manufacturer a certificate which shall indicate the name of the person returning the crowns, the date of return, the name of the crown manufacturer, and the number and denominations of crowns returned; or

5b.1.2 By transferring such crowns to any person and receiving in exchange therefor a certificate issued by the Commissioner authorizing the transferee to acquire such crowns; or

5b.1.3 By requesting a refund of tax actually paid in the case of the destruction of unused tax-paid crowns or, for bonded accounts handling tax-not-paid crowns, by requesting permission to make an adjustment reducing inventory. In either case, the destruction must be witnessed by a representative of the State Tax Department, and any request for refund or inventory adjustment must be accompanied by an affidavit stating the date, the quantity, and denomination of crowns involved, and the method of their destruction.

5b.2 Upon receipt of either such certificate, the Commissioner shall credit the account of the original purchaser in the amount indicated by the certificate.

5b.3 In the event of the disposition of such crowns in a manner not authorized by W. Va. Code § 11-19-1 et seq. and this regulation, the original purchaser thereof or his estate, and/or any person (whether acting in an official capacity or otherwise) who shall make such unauthorized disposition shall be liable for the amount of tax which the crowns represent; and, in addition, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of five thousand dollars (\$5,000) and imprisonment in the county jail for not less than sixty (60) days nor more than one (1) year, in the discretion of the court.

§ 110-19-6. Purchase Of Tax Stamps Or Tax Crowns; Discounts And Commissions; Bonds; Refunds And Statute Of Limitations.

6.1 Manufacturers or distributors of crowns may be required to furnish bond to ensure faithful compliance with such regulations. Any person desiring to purchase such crowns shall obtain from the Commissioner an authorization to do so, which shall specify the number of crowns to be purchased, and upon shipment thereof the manufacturer shall transmit to the Commissioner a copy of the invoice of such shipment. The Commissioner will not authorize the purchase of crowns by any person who is in default in the payment of any tax required by W. Va. Code § 11-19-1 et seq. and this regulation, or who has not obtained a West Virginia business registration certificate.

6.2 The Commissioner shall sell the tax stamps required by W. Va. Code § 11-19-1 et seq. and this regulation, or may authorize any sheriff, or any bank or trust company in this State, to sell such stamps as his deputy, and may allow as a commission a fee of one half of one percent (.5%) of the face value of all stamps sold by such deputy. In the sale of such stamps the Commissioner shall allow the following discounts:

6.2.1 On a sale of less than twenty-five dollars (\$25), no discount; on a sale of twenty-five dollars (\$25) or over and less than fifty dollars (\$50), a discount of five percent (5%); and on a sale of fifty dollars (\$50) or more, a discount of ten percent (10%).

6.3 In the case of stamps, the tax imposed by W. Va. Code § 11-19-1 et seq. and this regulation shall be paid in advance at the time the stamps are purchased. In the case of tax crowns, the tax shall be paid in advance at the time the Commissioner authorizes the purchase of such tax crowns, unless the purchaser applies for and obtains credit as provided in Section 6.4.

6.4 Bonds. - Whenever any person applies for an authorization to purchase tax crowns, he may apply for an extension of credit on the tax due with respect to such crowns, and if he files a bond in the form prescribed by the Commissioner, with satisfactory corporate surety, in an amount not less than twenty-five percent (25%) more than the tax due with respect to the tax crowns to be purchased, the Commissioner shall issue the necessary authorization. Any person who obtains such credit shall, on or before the fifteenth (15th) day of each month, file with the Commissioner on forms prescribed by him a return

stating the number of tax crowns used by such person during the preceding month, and he shall at the same time pay to the Commissioner the tax due on the crowns so used.

6.4.1 Duration of bond. - The West Virginia soft drinks tax crown purchase bond is to continue in full force and effect so long as the principal remains subject to liability for said tax, and an annual renewal certificate is required on the anniversary date of the bond.

6.4.2 Cancellation of bond. - If the bonded person or the bonding company elects to cancel the bonds, at least sixty (60) days notice of intent shall be given to the Commissioner in writing. Should the Commissioner elect to discontinue any further extension of credit and desire a cancellation of the contract, he may proceed with the dissolution upon written notice to both parties, terminating the bond sixty (60) days from date of cancellation notice. The Commissioner will notify both parties of the dissolution by certified mail.

6.5 Discount. - The Commissioner shall allow to each purchaser of tax crowns, whether for cash or credit, a discount of twelve and one half percent (12.5%) of the tax value of such crowns. The tax value of such crowns for purposes of determining such discount shall be the actual gross tax value of the crowns used in manufacturing, including the tax value of crowns lost or destroyed in manufacturing, and shall not be based on gross receipts from sales. Such discount, and the discount allowed on the sale of tax stamps, shall be in lieu of the allowance of any claim for refund by reason of the breakage or destruction of containers stamped or crowned as provided in W. Va. Code § 11-19-1 et seq. and this regulation, the spoilage of the soft drinks or syrups, or the loss or destruction of tax stamps or tax crowns.

6.5.1 Bottlers taking a credit of the twelve and one-half percent (12.5%) discount on their monthly soft drink tax return must include the tax for the indicia lost during manufacturing since this loss is compensated for by the discount allowed at the time of purchase or use of the indicia.

6.6 Refunds. - Unused Soft Drink Stamps may be returned to the Tax Department for a refund, less the appropriate discount allowed at the time of purchase: **Provided**, That a refund application is filed for the amount returned and the correct amount is deducted from the closing inventory on the monthly Soft Drink Tax Return.

6.6.1 When the tax stamps or crowns or soft drinks, soft drink powders, soft drink syrups or soft drink invoice products from the representative list referenced in Section 14 of these regulations, upon which tax has been paid are destroyed by fire, lightning or flood; and when soft drinks, syrups or powders upon which tax has been paid to the State of West Virginia are exported from this State or are required to be destroyed pursuant to federal or State order, the taxpayer may file a claim for refund for an amount equal to the amount of tax actually paid for such stamps, crowns or invoice products. The Commissioner shall cause a refund to be made only when a claim for refund is filed within one hundred and eighty (180) days from the date the tax stamps or crowns were destroyed or the soft drink product upon which tax was paid were destroyed or exported from this State. Any claim for refund not timely filed shall not be construed to be or to constitute a moral obligation of

this State for payment. Such claim for refund shall also be subject to the provisions of W. Va. Code § 11-10-14 et seq. At the election of the taxpayer, the amount of any refund may be established as a credit. The amount refunded or credited shall not be subject to the interest provisions of W. Va. Code § 11-10-17(d).

6.6.2 No refund will be given on soft drinks or tax indicia for breakage or destruction of stamped or crowned containers, spoilage of soft drinks or syrups, or the loss or destruction of tax stamps or crowns while in the process of manufacturing.

6.7 Tax paid crowns. - Any person using tax paid crowns as evidence of the payment of the soft drinks tax must comply with all requirements established by the Commissioner.

6.7.1 No soft drink tax crowns of any style may be sold to any soft drink manufacturer by any crown manufacturer without authorization from the Commissioner. Authorization will be made by the issuance of an official Soft Drinks Tax Crown Certificate. The certificate will entitle the soft drink manufacturer to receive from the crown manufacturer the quantity of crowns specified.

6.7.2 The crown manufacturer shall be responsible for the safe keeping of all crowns manufactured for sale until such time as they are delivered to the purchaser in accordance with the certificate issued by the Commissioner specifying the exact amount of crowns authorized. Crowns shall not be sold or delivered in excess of the exact number specified by the certificate.

6.7.3 To secure delivery of crowns, soft drinks manufacturers are required to pay the tax in full, or have executed a bond in an amount not less than one hundred twenty-five percent (125%) of the tax involved, represented by the number of crowns desired or secure a certificate authorizing the crown manufacturer to make delivery of the number of crowns specified by the certificate. Nothing contained herein shall prevent soft drink manufacturers from purchasing crowns on both cash basis (prepaid) and bond account at the same time. The crown company or soft drinks manufacturer will be liable for the tax value of the crowns delivered in excess of the number of crowns indicated by the certificate.

6.7.4 Certificate release numbers will be issued by the Commissioner on soft drink tax requisition forms for soft drink manufacturers who hold a West Virginia Business Registration Certificate, (W. Va. Code § 11-12-1 et seq.) indicating the number of crowns, the crown manufacturer and the denomination of crowns desired. If no bond has been executed and filed with the Commissioner, the soft drink tax requisition form must include remittance for the full tax less discount.

6.7.5 All crown manufacturers authorized by the Commissioner to manufacture official West Virginia crowns will be required to conform to such special regulations or instructions as may be issued. Crown manufacturers will be required to file monthly reports on forms prescribed and furnished by the Commissioner. All records pertaining thereto are subject to examination by the Commissioner.

6.7.5.1 Tax paid crowns shall meet the following specifications. The outline of the State of West Virginia shall appear around the face of the crown at any place where, by reason of other display matter on the crown, this outline would not be obscure; or, it shall appear apart from other display matter in such a manner that it could be easily distinguished at a glance as evidence of tax payment. The overall dimensions of the outline map of West Virginia shall be not less than one-quarter ($1/4$) of an inch nor more than five-sixteenths ($5/16$) of an inch from the uppermost to the lowermost outside of the outline boundary or from one side to the other at the greatest width of the outline map. The line of the outline boundary map shall be not less than one sixty-fourth ($1/64$) of an inch in width and shall be a single line.

6.7.5.2 Every design for soft drink tax paid crowns shall be approved in writing by the Tax Commissioner before any such crowns shall be manufactured, sold or distributed.

6.7.6 All soft drink manufacturers desiring to use crowns will be required to conform to the regulations of the Commissioner with regard to such crowns. All records of the soft drinks manufacturer pertaining to the purchase and use of crowns are subject to examination by the Commissioner.

6.7.7 All soft drink manufacturers not operating on a bond or credit account are required to file a monthly report. These reports are due in the office of the Commissioner on or before the fifteenth (15th) day of the month showing the transactions of the previous month. The reports must reflect invoice payment method schedules if applicable, the beginning inventory, the various purchases, the sales made, the stamps purchased and applied against sales, and closing inventories.

6.7.8 All soft drink manufacturers who operate on both cash basis and bond account are required to file a monthly report. These reports are due in the Commissioner's office on or before the fifteenth (15th) day of the month showing the transactions of the previous month.

6.7.9 The Commissioner will not authorize the purchase of crowns by any person who is in default in the filing of monthly reports and the tax due on the tax indicia.

6.7.10 Canning or packing plants. - In the event a manufacturer of soft drink items, subject to the West Virginia soft drinks tax, elects to arrange for a canner to bottle, can or pack his products, the manufacturer shall apply to the Commissioner for crown certificates and pay the applicable tax or furnish a surety bond as provided in W. Va. Code § 11-19-1 et seq. The manufacturer shall file monthly reports on forms prescribed by the Commissioner on or before the fifteenth (15th) day of the month showing the transactions of the previous month.

6.7.11 Soft drink manufacturing companies located outside of West Virginia who have sales in West Virginia may secure crown certificates and pay the tax. The soft drink manufacturer located outside of West Virginia will be allowed credit on their monthly soft drink tax return for out-of-state sales of soft drink product with West Virginia tax indicia affixed.

6.7.12 The soft drinks manufacturer shall obtain permission from the Commissioner to return soft drinks tax crowns to the crown manufacturer. The crown manufacturer is prohibited from accepting such returns without written authorization from the Commissioner.

6.7.13 The crown manufacturer may not reject any official or tax paid crowns from his inventory without written notice to the Commissioner.

6.7.14 The exchanging, borrowing or purchasing of crowns between soft drink manufacturers is strictly prohibited.

6.7.15 Any crown for which credit is being claimed shall be stored until the exact count is verified by the Commissioner, after which credit may be taken in the crown inventory. The Commissioner will not authorize the purchase of crowns by any person who is in default in the payment of tax or who has not filed his monthly report as required. Any person who obtains credit shall file a report and remit the tax. Such report and tax is due in the Commissioner's office on or before the fifteenth (15th) day of the month showing transactions for the preceding month.

§ 110-19-6a. Due Date Of Reports; Additional Reports; Extensions Of Time.

6a.1 Every person subject to the tax imposed by W. Va. Code § 11-19-1 et seq. and this regulation shall on or before the fifteenth (15th) day of each month make and file with the Commissioner a report of such person's operations for the preceding month to verify liability for that tax. This report shall be in a form prescribed by the Commissioner.

6a.2 The Commissioner may by fifteen (15) days' written notice require the filing of such additional reports as he deems necessary to verify a person's liability under W. Va. Code § 11-19-1 et seq.

6a.3 Upon written application setting forth good cause, the Commissioner may extend the time for filing such reports or additional reports on such terms and conditions as he may require.

6a.4 A monthly report shall be filed by the following:

6a.4.1 **Dairies and soft drink manufacturers.** - Filed by all manufacturers and canners or bottlers of soft drinks.

6a.4.2 **Wholesalers and/or distributors of syrups, powders, and soft drinks.** - Filed by all persons who are not actually canning or bottling soft drinks.

6a.4.3 **Retailers of syrups, powders, and soft drinks.** - Filed by all dealers other than wholesale dealers involved in the mixing, making, compounding, or manufacturing of any drink from a soft drink syrup or powder base, or a person selling any soft drink product upon which the tax has not been paid.

§ 110-19-6b. Additional Penalty For Late Filing Or Payment.

6b.1 In addition to the additions to tax, penalties and interest authorized in W. Va. Code § 11-10-1 et seq., if any taxpayer fails to file a return or pay the proper amount of tax within the time specified herein, the Commissioner shall refuse to authorize the purchase of tax stamps or crowns by the delinquent taxpayer: **Provided**, That if the failure to pay was due to reasonable cause, the Commissioner may waive this penalty.

6b.2 The taxpayer may request a hearing within sixty (60) days after service of notice of the refusal of the Commissioner to authorize the purchase of the tax stamps or crowns. Upon receipt of a written request for a hearing filed within the time prescribed, the provisions for hearing and appeal in W. Va. Code §§ 11-10-9 and 10 shall be applicable.

§ 110-19-6c. Reserved For Future Use.

§ 110-19-6d. Interstate Sales.

6d.1 Sales of products subject to the West Virginia soft drinks tax which are shipped to out-of-state dealers are not taxable.

6d.1.1 Interstate sales of a dealer using non-tax crowns. - If the manufacturer elects to use non-tax crowns for out-of-state sales, he will be required to furnish a detailed accounting of his crown stock. Even though non-tax crowns are used for interstate sales, the manufacturer shall maintain a complete sales record. The record must show the purchaser, his address, the date of sale and the number of cases sold. Such sales records shall be open for inspection by agents of the Commissioner at all times during regular office hours.

6d.1.2 Interstate sales of a dealer using tax crowns. - The soft drinks intended for interstate sales may be capped with official West Virginia crowns and credit taken when computing the tax payable to the Commissioner. The manufacturer or dealer proceeding on this basis shall indicate the date of sale, the consignee and the number of cases sold on forms as may be prescribed and furnished by the Commissioner. This Section applies to both soft drink manufacturers and dairies.

6d.1.3 Merchandising. - No manufacturer or his representatives may distribute bottled soft drinks for promotional purposes unless the West Virginia soft drinks tax has been paid.

6d.1.4 Records and audits. - Every dealer of bottled soft drinks or soft drinks syrups and powders or other items subject to the soft drinks tax manufactured or imported, sold, used, consumed or distributed in this State shall maintain a complete record of all transactions. The records shall be kept for at least three (3) years. Records are subject to audit by the Commissioner at any time during regular business hours. All soft drink products are subject to inspection at any time during regular business hours. The records shall include:

6d.1.4.1 A monthly inventory of such stock taken at the close of business on the last business day of the month. Such inventory shall reflect the stamped and unstamped stock. Reports and all records must be prepared on

the calendar month rather than by periods due to the accounting process involved.

6d.1.4.2 Total purchases of such goods during the month from all sources supported by copies of invoices from each source of supply.

6d.1.4.3 Total sales of items in West Virginia subject to the tax, tax paid or exempted by regulations, supported by sales slips, invoices or other records or methods as may be required by the Commissioner to each customer.

6d.1.4.4 Total sales to out-of-state dealers. Separate records are to be maintained for each state into which shipments are made. A stamp or crown account shall be kept which reflects:

6d.1.4.4.1 Crowns or stamps on hand at close of business on the last day of preceding month. If tax paid crowns and non-tax paid crowns are in stock on that date, then a definite accounting of each.

6d.1.4.4.2 Crowns or stamps bought and received during the month.

6d.1.4.4.3 Crowns or stamps used during the month.

6d.1.4.4.4 Crowns or stamps on hand at close of business on last business day of the month.

§§ 110-19-7 and 110-19-8. Reserved For Future Use.

§ 110-19-8a. Seizure And Sale Of Soft Drink Syrups By Commissioner; Forfeiture; Collection Of Tax.

8a.1 Whenever the Commissioner shall discover any soft drink syrups or powders, subject to tax as provided by W. Va. Code § 11-19-1 et seq. and this regulation and upon which the tax has not been paid as herein required, the Commissioner is hereby authorized and empowered forthwith to seize and take possession of such soft drink syrups, which shall thereupon be deemed to be forfeited to the State, and the Commissioner shall within a reasonable time thereafter sell such forfeited soft drink syrups and from the proceeds of such sale shall collect the tax and interest due thereon, together with a penalty of fifty percent (50%) of the tax due and the cost incurred in such proceedings, and pay the balance, if any, to the person in whose possession such soft drink syrups were found.

8a.2 Such seizure and sale shall not be deemed to relieve any person from fine or imprisonment provided for violation of any provision of W. Va. Code § 11-19-1 et seq. and this regulation. Such sale shall be made in the county where most convenient and economical. Notice of such sale shall be published as a Class I legal advertisement in compliance with the provisions of W. Va. Code § 59-3-1 et seq., and the publication area for such publication shall be the county wherein such seizure was made and the county wherein the sale is to take place. Notice shall be published at least five (5) days prior to the sale.

8a.3 The Commissioner, within ten (10) days after seizure, shall give the owner of the soft drink syrups written notice of the seizure and forfeiture. The owner may, within twenty (20) days after receipt of the notice, request a hearing before the Commissioner or his examiner. The hearing shall be held as provided in W. Va. Code § 11-10-9 and the owner may appeal the decision of the Commissioner as provided in W. Va. Code § 11-10-10.

§ 110-19-9. Reserved For Future Use.

§ 110-19-10. Altering, Counterfeiting Or Reusing Tax Stamps Or Tax Crowns; Penalty.

10.1 Any person who falsely or fraudulently makes, forges, alters, or counterfeits any tax stamp or tax crown prescribed by the Commissioner under the provisions of W. Va. Code § 11-19-1 et seq. and this regulation, or who knowingly or willfully utters, passes or tenders as true any such false, altered, forged or counterfeited stamp or crown, or who uses more than once any stamp or crown for the purpose of evading such tax shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment in the penitentiary for not less than one (1) year nor more than five (5) years.

§ 110-19-11. Penalties; Crimes; Tax Crimes and Penalties Act Applicable.

11.1 Any person who violates any of the provisions of W. Va. Code § 11-19-1 et seq. and this regulation under the authority of W. Va. Code § 11-10-1 et seq. for the violation of which no other penalty is provided by law, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100).

11.2 Each and every provision of the West Virginia Tax Crimes and Penalties Act set forth in W. Va. Code § 11-9-1 et seq. shall apply to the tax imposed by W. Va. Code § 11-19-1 et seq. with like effect as if said Act were applicable only to the tax imposed by W. Va. Code § 11-19-1 et seq. and were set forth in extenso in W. Va. Code § 11-19-1 et seq. See W. Va. Code § 11-9-2.

§ 110-19-12. Separability.

12.1 The provisions of the several Sections of W. Va. Code § 11-19-1 et seq. and this regulation shall be deemed to be separable insofar as they or their meaning is not inseparably connected, and if any provisions of W. Va. Code § 11-19-1 et seq. or this regulation shall be held unconstitutional, such holding shall not affect any of the other provisions thereof.

§ 110-19-13. General Procedure And Administration.

13.1 Each and every provision of the "West Virginia Tax Procedure and Administration Act" set forth in W. Va. Code § 11-10-1 et seq. shall apply to the tax imposed by W. Va. Code § 11-19-1 et seq. and this regulation with like effect as if said act were applicable only to the tax imposed by W. Va. Code § 11-19-1 et seq. and this regulation and were set forth in extenso in W. Va. Code § 11-19-1 et seq. and this regulation.

§ 110-19-14. Representative List Of Taxable Soft Drink Products.

14.1 A detailed listing of soft drink products, including their classification and stamp or alternate tax payment method, is available upon request:

State Tax Department
Accounting Division
Soft Drink Tax Unit
Revenue Center
1001 Lee Street, East
Charleston, WV 25301

§ 11-19-15. Priority of Tax in Distributions of Property and Estates.

15.1 In the distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the property or estate of any person, all soft drinks taxes due and unpaid shall be paid from the first money available for distribution in priority to all claims and liens, except for any taxes and debts due the United States which under federal law are given priority. Any person charged with the administration or distribution of any such property or estate who shall violate the provisions of this section shall be personally liable for any taxes accrued and unpaid under this article which are chargeable against the person whose property or estate is in administration or distribution.

15.2 There is a priority for all unpaid soft drinks tax in distributions of the property or estate of any person, and the tax must be paid from the first money available for distribution in priority to all other claims and liens, except for any taxes and debts due the United States which under federal law are given priority.

15.2.1 The distribution of property subject to federal tax liens is subject to the priority of such liens provided in the Internal Revenue Code of 1986 (26 U.S.C. § 1 et seq.).

15.2.2 The distribution of property in federal bankruptcy proceedings is subject to the priorities of debts and liens provided in the United States Bankruptcy Code (11 U.S.C. § 101 et seq.).

15.2.3 This priority applies to the amount of tax, interest, additions to tax and penalties.

15.3 The priority applies to all distributions of the property or estate of any person. A "distribution" of property or estate is the sale or transfer of the property, or the disbursement of money resulting from the sale or transfer of the property or estate of any person. Distributions include, but are not limited to, the transfer of property or disbursement of proceeds of sales of property by any executor, administrator, receiver, trustee, fiduciary, special commissioner, or any public officer under judicial process; and distributions in any proceedings such as bulk sale, liquidation sale, estate sale, assignment for the benefit of creditors, interpleader action, and administrative or judicial proceeding for the dissolution of a partnership or corporation.

15.4 The priority does not apply to transactions that do not constitute distributions of property. These transactions include the sale or transfer of property in the ordinary course of the business of the owner of the property; and sales or transfers of any property by the owner or for consideration payable to the owner by the purchaser or transferee.

15.5 The priority applies to the distribution of all property, including but not limited to real property or any interest therein; tangible personal property, including fixtures, equipment, machinery, furniture and vehicles; intangible property, including accounts receivable, contract rights, bank accounts, stocks and bonds; and the proceeds from the sale or liquidation of any such property.

15.6 The priority requires payment of the tax from the first money that is available for distribution to lienors, creditors, beneficiaries, or any other person, after payment of costs, commissions, fees and reasonable expenses incurred in the preservation, storage, liquidation, or transportation of the property or estate.

15.7 The debt or claim for soft drinks taxes has priority over all claims and liens, except debts due the United States which under federal law are given priority.

15.7.1 Claims subject to this priority include any debt or obligation, liquidated or unliquidated, that does not constitute a lien upon the property or estate.

15.7.2 Liens subject to this priority include any charge or encumbrance on the property or estate for payment of any claim, debt or obligation, such as a deed of trust, judgment lien, security interest, vendors lien, execution lien, tax lien, mechanics lien, landlords lien and municipal lien.

15.7.3 The priority of the soft drinks tax debt in such distributions is not determined by the presence or absence of a perfected notice of tax lien, by the presence or absence of a perfected lien securing any competing claim or debt, or by the order in which any such competing liens were perfected.

Bill Tax, Soft Drinks 110-19

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H. B. 4330

(By Delegate Grubb)

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

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 division of tax to promulgate legislative rules relating to
14 the soft drinks tax.

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 eighth day of August, one thousand nine hundred ninety-one,
16 modified by the division of tax to meet the objections of the
17 legislative rule-making review committee and refiled in the state
18 register on the tenth day of January, one thousand nine hundred
19 ninety-two, relating to the division of tax (soft drinks tax),
20 are authorized.

21

22 NOTE: The purpose of this bill is to authorize the Division
23 of Tax to promulgate legislative rules relating to the soft
24 drinks tax.

25

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

AM
1 (kk) The legislative rules filed in the state register on the
2 eighth day of August, one thousand nine hundred ninety-one,
3 modified by the division of tax to meet the objections of the
4 legislative rule-making review committee and refiled in the state
5 register on the seventh day of January, one thousand nine hundred
6 ninety-two, relating to the division of tax (municipal business
7 and occupation tax), are authorized with the amendments set forth
8 below:

9 On page forty-six, section 2g, by striking out all of
10 subsection 2g.3;

11 And,

12 On pages forty-six and forty-seven, by renumbering the
13 remaining subsections.

AM
14 (ll) The legislative rules filed in the state register on the
15 eighth day of August, one thousand nine hundred ninety-one,
16 modified by the division of tax to meet the objections of the
17 legislative rule-making review committee and refiled in the state
18 register on the tenth day of January, one thousand nine hundred
19 ninety-two, relating to the division of tax (soft drinks tax),
20 are authorized with the amendments set forth below:

✓
21 On page six, subsection 5.2, in the section heading, by
22 striking out the word "breakfast" and inserting in lieu thereof
23 "certain bottled";

24 And,

1 On page six, subsection 5.2, after the word "mixes" by
2 inserting the words "low-alcoholic brewed beverages such as near
3 beer."

4 (mm) The legislative rules filed in the state register on the
5 eighth day of August, one thousand nine hundred ninety-one,
6 modified by the division of tax to meet the objections of the
7 legislative rule-making review committee and refiled in the state
8 register on the tenth day of January, one thousand nine hundred
9 ninety-two, relating to the division of tax (corporation net
10 income tax), are authorized with the amendment set forth below:

11 On page twelve, subdivision 6.4.3, by striking out all of
12 subdivision 6.4.3.

13 (nn) The legislative rules filed in the state register on the
14 eighteenth day of June, one thousand nine hundred ninety-one,
15 modified by the state tax commissioner to meet the objections of
16 the legislative rule-making review committee and refiled in the
17 state register on the tenth day of January, one thousand nine
18 hundred ninety-two, relating to the state tax commissioner
19 (appraisal of producing and reserve oil and natural gas property
20 for periodic statewide reappraisals for ad valorem property tax
21 purposes), are authorized.

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

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

Telephone: (304) 558-6000
Corporations: (304) 558-8000



STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
1900 Kanawha Blvd., East
Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

FAX: (304) 558-0900

TO: John Montgomery

AGENCY: Tax Department

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: March 23, 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: 19 TITLE: 110 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, Tax Department

DATE: July 13, 1993

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

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JUL 13 3 05 PM '93

FILED