

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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 , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: 22

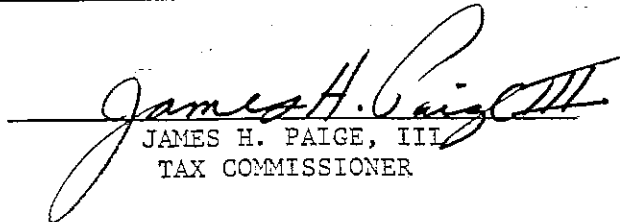
TITLE OF RULE BEING PROPOSED: PROPERTY TRANSFER TAX

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(jj), 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



FILED

1992 APR 15 AM 8:51

State of West Virginia
Department of Tax and Revenue

Charleston 25305

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:

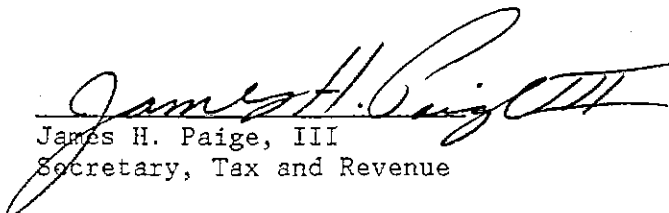
Title of Rule: Property Transfer Tax

Title Number: 110

Series Number: 22

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 22
APRIL 15, 1992
PROPERTY TRANSFER TAX

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

§ 110-22-1. General.

1.1 Scope. - These regulations establish general operating procedures for the Property Transfer Tax.

1.2 Authority. - W. Va. Code §§ 11-10-5 and 11-22-5.

1.3 Filing Date. - April 15, 1992.

1.4 Effective Date. - April 15, 1992.

§ 110-22-2. Definitions.

2.1 "Person" includes firms, associations and corporations.

2.2 "Commissioner" means State Tax Commissioner.

2.3 "Transaction" means the delivering, accepting or presenting for recording of a document.

2.4 "Value" means in the case of any document not a gift, the amount of the full consideration paid or to be paid, including any liens to be assumed; in the case of a gift or any other document without consideration, the actual monetary value of the property conveyed or transferred.

2.5 (a) "Document" means any deed or any other written instrument which transfers real property, or any interest in real property, within this State from one person to another.

(b) "Document" does not mean or include the following, which are, therefore, not subject to the property transfer tax, to wit:

(1) A Will;

(2) A deed or other written instrument which transfers real property, or any interest therein, having a value of one hundred dollars (\$100) or less. Thus, a deed transferring real property valued at one hundred dollars and one cent (\$100.01) is taxable, while a deed transferring real property valued at one hundred dollars (\$100) or less is not taxable.

(3) A testamentary trust. - This is a transfer of property to a trustee for the benefit of a third party and which becomes effective upon death of the person making the transfer.

(4) Intervivos trust. - This is a transfer of property to a trustee for the benefit of a third party which is effective during the life of the person making the transfer.

(5) A deed of partition. - A division of land between co-owners.

(6) A deed made pursuant to mergers of corporations.

(7) A deed made by a subsidiary corporation to its parent corporation for no consideration other than the cancellation or surrender of subsidiary's stock. Such a transaction would be taxable if any consideration involved would exceed one hundred dollars (\$100).

(8) A lease.

(9) Any transfer between husband and wife.

(10) Any transfer between parent and child and his or her spouse, without consideration, or between child and parent. A parent can give his child and his or her spouse real property and the transfer is not taxable, but if he sells it to the child and his or her spouse, the transfer is taxable if the selling price exceeds one hundred dollars (\$100).

(11) A transfer between any person and a "straw" party for any purpose when the transfer is without consideration.

(12) Gifts to, or transfers from or between voluntary charitable or educational associations or trustees thereof and like nonprofit corporations having the same, or similar, purposes. Transfers with consideration to such associations by a third party are subject to the tax.

(13) A quit claim or corrective deed without consideration. Either of this type deed with a consideration of over one hundred dollars (\$100) is subject to the tax.

(14) A transfer to or from the United States, the State of West Virginia, or to or from any of their instrumentalities, agencies or political subdivision by gift, dedication deed or condemnation proceeding.

(15) Deeds of Trust or mortgage given as security for a debt.

2.6 A figurative exemption exists in the case of a deed conveying real estate situated in more than one county, in that stamps representing the total value or consideration may be attached to only one of the deeds and the other documents are, therefore, not subject to the tax. A declaration stating such a situation must be attached to all documents concerned.

2.7 The law imposes the primary tax liability upon the grantor. In the event the grantee accepts a document without the tax having been paid or the stamps affixed, such tax shall be paid by the grantee. Likewise, the grantee shall pay the tax on any transfer of real property from a trustee or a county clerk transferring real property sold for taxes.

2.8 A transfer of real estate when a life estate is retained is subject to the property transfer tax on the present day market value of said property less the computed value of the estate of the life tenant as set forth in the Statutory formula of life tenancy. (West Virginia Code article 2, chapter forty-three.)

Suggested Declaration: _____

I hereby declare: the true and actual value of the property transferred by the document to which this declaration is appended, is to the best of my knowledge and belief \$_____; said true and actual value having been determined by subtracting the computed value of the estate of the life tenant from the present day market value of said property.

§ 110-22-3. Taxation Rate.

3.1 A state excise tax is levied and imposed on and after midnight of June 30, 1959, upon the privilege of transferring title to real estate by every person who delivers, accepts, or presents for recording, any document referred to in Section 2 of these regulations, or in whose behalf any document is delivered, accepted, or presented for recording.

(a) The rate of tax is one dollar and ten cents (\$1.10) for each five hundred dollars (\$500) value or fraction thereof as represented by such document as stated in the declaration of value appended thereto, which is a state tax. In addition, by an Act of the 1967 Regular Session of the West Virginia Legislature, on and after January 1, 1968, and additional county excise tax for the privilege of transferring title to real estate is imposed at the rate of fifty-five cents (55¢) for each five hundred dollars (\$500) or fraction thereof as represented by such document, for a total tax of one dollar and sixty-five cents (\$1.65), which shall be payable by the grantor unless the grantee accepts the same without the tax having been paid, in which case the tax shall be paid by grantee at the time of delivery or presenting for recording of such document.

(b) On and after July 1, 1989, the county excise tax of fifty-five cents (55¢) for each five hundred dollars (\$500) of value, or fraction thereof, may be increased to an amount equal to the State excise tax of one dollar and ten cents (\$1.10) for each five hundred dollars (\$500) of value, or fraction thereof: **Provided**, That such county excise tax may only be either fifty-five cents (55¢) or one dollar and ten cents (\$1.10) for each five hundred dollars (\$500) of value, or fraction thereof. No such increase in the county excise tax may occur unless approved by a majority vote of the members of the county commission: **Provided**, That no vote may occur unless the county commission published a notice of its intention to increase such tax, and the proposed effective date of such increase, at least sixty (60) days prior to the meeting where the matter will be considered, the notice was published as a Class I legal advertisement in accordance with W. Va. Code § 59-3-1 et seq., and the publication area is the county in which the county commission is located.

§ 110-22-4. Stamps, Affixation And Cancellation.

4.1 **Evidence of Payment.** - The payment of the tax imposed upon the privilege of transferring title to real estate shall be evidenced by the

affixing of the documentary stamp, or stamps, to every document by the person executing, delivering, or presenting for recording such document.

4.2 Affixing Stamps. - Each stamp shall be affixed in such a manner that its removal will require the continued application of steam or water.

4.3 Cancellation of Stamps.

(a) The person using or affixing such stamps shall write or stamp, or cause to be written or stamped thereon, the initials of his name and the date upon which stamps were affixed or used so that stamps may not again be used.

(b) In the event the person presenting the document for recording has failed to cancel the stamps affixed thereto, the county clerk must then cancel the stamps by writing the date on the face of each stamp.

(b) In the event the person presenting the document for recording has failed to cancel the stamps affixed thereto, the county clerk must then cancel the stamps by writing the date on the face of each stamp.

(c) Where recorded documents are not microfilmed or otherwise photographically reproduced for recordation, the clerk shall write or stamp on the recorded copy of each such document the amount of tax stamps which were affixed thereto and the date of cancellation of such stamps.

4.4 Availability. - Stamps shall be offered for sale by the clerks of the various county courts. The stamps must be purchased from the county clerk and the tax collected in the county where the document is first admitted to record. Such stamps to be furnished to the county clerk by the State Tax Commissioner.

4.5 Denominations and Description.

(a) Documentary adhesive stamps, as prepared and furnished the county clerks by the Commissioner, are 1-1/8 x 1-1/4 inches with roulette perforations, slightly larger than a standard U.S. postage stamp. The top center bears a facsimile of the obverse side of the West Virginia State Seal. Immediately under the seal is imprinted "Property Transfer Tax"; and immediately under the caption are the words "state and county"; and immediately under this caption is the denomination of the stamp printed in the same color ink as the stamp; immediately under the denomination is the serial number for each individual stamp with the letter prefix indicating the denomination. Just above and to the right of the "y" in the word "Property", is the symbol for copyright and "W. Va."

(b) Stamps are issued by the Commissioner to the county clerks in sheets of 50 (fifty) stamps. The "A" series are gray in color and one dollar and sixty-five cents \$1.65 denomination; the "B" series are red in color and four dollars and ninety-five cent (\$4.95) denomination; the "C" series are blue in color and thirteen dollars and twenty cent (\$13.20) denomination; the "D" series are green in color and twenty-one dollar and forty-five cent (\$21.45) denomination; the "E" series are purple in color and fifty-one dollars and fifteen cents (\$51.15) denomination; the "F" series are brown in color and ninety-four dollars and five cents (\$94.05) denomination. An additional denomination, series "H" will be issued in quantities of less than sheets fifty

(50) stamps to be used on property transfers with a value of ninety-nine thousand five hundred dollars and one cent (\$99,500.1) to one hundred thousand dollars (\$100,000); the "H" series are olive green in color and three hundred thirty dollars (\$330) denomination.

4.6 Issuance and Receipt. - Upon request by the county clerk, stamps are issued by the Commissioner, accompanied with two, of three, typewritten copies of the following receipt. One copy is for the records of the county clerk and one copy for signature of acknowledgement of the clerk and returned to the Commissioner. The Commissioner sends the third copy to the Division of Inspection and Supervision of Public Offices and the State Tax Department for future audit.

§ 110-22-5. Reports.

5.1 Proceeds from Sale of Stamps. - The clerk shall, at the end of the month, pay all of the proceeds collected from the sale of stamps for the State excise tax to the State Auditor in the manner provided by law. The proceeds shall be credited to the state general revenue fund. The clerk shall, at the end of the month pay all of the proceeds from the sale of stamps for the county excise tax into the county general fund for the use of the county.

5.2 Inventory Report. - The county clerk shall prepare and submit to the Division of Inspection and Supervision of Public Offices, State Tax Department, a semi-annual inventory of Documentary Stamps on a form available from the tax commissioner.

§ 11-22-6. Penalties.

6.1 Recording Without Stamps. - Any clerk who shall record any document without the proper documentary stamp or stamps affixed thereto, as is indicated in such document or accompanying declaration, shall, upon conviction in a court of competent jurisdiction, be fined fifty dollars. Whenever an instrument, claimed to be not a document subject to the tax, is presented for recording, the clerk shall require the instrument to contain a declaration stating why such instrument is not a taxable document within the meaning of the property transfer tax statute. No taxable document may be recorded without the proper amount of stamps affixed, but if recorded without said stamps, it cannot be used as the basis for any legal proceedings or as evidence in any legal proceeding until the proper amount of stamps are affixed.

6.2 Unlawful Acts. - It is unlawful for any person to knowingly or willfully violate any of the provisions of the property transfer law and upon conviction of any violations, a person shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or be imprisoned for not more than five (5) years or both.

§ 110-22-7. Refunds And Credits.

7.1 Credit to Clerk for Lost, Destroyed, or Mutilated Stamps. - The Commissioner will credit the account of the county clerk for stamps issued; for mutilated, but identifiable, stamps, or stamps lost or destroyed by fire or flood, when the clerk makes and forwards to the Commissioner, an affidavit setting forth information in detail, to the satisfaction of the Commissioner,

regarding the loss or destruction by fire, flood, or otherwise. In the case of mutilated stamps, the affidavit shall set forth the circumstances of the mutilation in detail - the number and denominations involved, and the fact that the mutilated stamps are being returned to the Tax Commissioner. Such affidavits and mutilated stamps shall be returned to the Tax Commissioner, who will maintain a file of such mutilated stamps and affidavits in order that proper credit and consideration be given the clerks in subsequent audits by the Division of Inspection and Supervision of Public Offices of the State Tax Department.

7.2 Refunds by County Clerk or State Auditor.

(a) Any person who may have been required to pay the Property Transfer Tax because of any mistake of law or fact, or because the tax was improperly collected, may apply for a refund thereof either to the county clerk receiving such payment, or to the State Auditor for the state excise tax portion of the Property Transfer Tax and to the county clerk who had received such payment for the county excise tax portion of the Property Transfer Tax.

(b) If the erroneous payment is discovered within the calendar year that the tax was paid, the petition for refund shall be filed with the county clerk where the tax was paid.

(c) If the erroneous payment was made in a calendar year preceding its discovery, then the petition for refund should be filed with the State Auditor for the state excise tax portion and to the county clerk where the payment was made for the county excise tax portion.

(d) The following instruments should be filed with all applications for refund:

(1) A "Petition for Refund," making a full detailed disclosure of the factual situation, claims for refund, the statutory authority, prayer for refund, and be properly attested to by a Notary Public.

(2) A "Declaration of Consideration or Value" signed by the grantor and attested to by a Notary Public, incorporating by reference either the cancelled documentary stamps, or photostatic copies thereof.

(3) Relevant information or written instruments may be attached to the petition, such as cancelled checks, deeds of trust, charters or by-laws of voluntary charitable or educational associations and like nonprofit corporations having the same, or similar purposes, etc.

(4) If the application for refund is being filed with the State Auditor, Capitol Building, Charleston, West Virginia, there must also be filed an affidavit signed by the county clerk and attested to by Notary Public, warranting the county clerk collected the amount of money prayed for in the petition which has been paid to the State Auditor and vouching for the authenticity of the documentary stamps attached to the "Declaration of Consideration or Value."

Bill Tax, Property Transfer 110-22

H. B. 4327

(By Delegate Grubb)

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

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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 the property transfer 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 thirty-first day of July, 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 (property transfer tax) are authorized.

21

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



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(Plus all the volunteer
help we can get)

STATE OF WEST VIRGINIA

SECRETARY OF STATE

Building 1, Suite 157-K
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TO: John Montgomery

AGENCY: State Tax Department

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: January 13, 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: 22 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: Staff Attorney

DATE: 1-25-93

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