

**WEST VIRGINIA**  
**SECRETARY OF STATE**  
KEN HECHLER  
**ADMINISTRATIVE LAW DIVISION**

Form #6

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**FILED**

APR 20 2 25 PM '94

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: 35

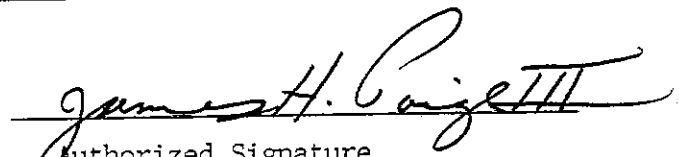
TITLE OF RULE BEING PROPOSED: CHARITABLE RAFFLE BOARDS AND GAMES

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

AUTHORIZATION IS CITED IN (house or senate bill number) SB-186

SECTION 64-7-6(vv), PASSED ON MARCH 12, 1994

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON  
THE FOLLOWING DATE: MAY 1, 1994

  
Authorized Signature  
James H. Paige III  
Secretary of Tax and Revenue

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

A. RENEE COE  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

Building 1, Suite 157-K  
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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

March 15, 1994

John Montgomery  
Tax Dept.  
Bldg. 1, Rm.400W  
State Capitol  
Charleston, WV 25305

**SB 186** authorizing, Title 110, Series 35, Charitable Raffle Boards & Games, passed the Legislature on **March 12, 1994**. It is now awaiting the Governor's signature.

You have sixty (60) days after the Governor signs SB 186, to final file the legislative rule with the Secretary of State's office. To final file your legislative rule, fill in the blanks on the enclosed form #6, the "Final Filing" form and file the form with our office with a promulgation history of the rule. Authorization for your legislative rule is cited in **SB 186** section 64-7-6(vv). The agency may set the effective date of the legislative rule up to ninety (90) days from the date the legislative rule is final filed with the Secretary of State's office. Please have an authorized signature on the bottom line.

**\*\*\*IMPORTANT: IF YOUR AGENCY HAS COMPLETED THE LEGISLATIVE RULE ON A WORD PERFECT OR WORD PERFECT COMPATIBLE COMPUTER SYSTEM THAT USES A 3 1/2" OR 5 1/4" DISK, YOU MUST SUBMIT A CLEAN COPY, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, TO OUR OFFICE WHEN FINAL FILING THE RULE. STATE ON THE DISK THE FORMAT THE RULE IS IN AND THE TITLE IT IS FILED UNDER. THIS WILL MAKE IT QUICKER FOR US TO ENTER YOUR RULES ON THE LEGISLATIVE DATA BASE. REMEMBER THE TEXT OF THE COMPUTER FILED RULE MUST BE IDENTICAL - WORD FOR WORD, COMMA FOR COMMA, WITH ALL UNDERLINING AND STRIKE-THROUGHS TAKEN OUT, AS THE HARD COPY AUTHORIZED BY THE LEGISLATURE.**

After the final rule is entered into the legislative data base, the rule will be sent to the agency for review and proofing. Following confirmation or corrections, as the case may be, the Secretary of State shall submit to the agency a final version of the rule for their records.

If you have any questions or need any assistance, please do not hesitate to call our office.

Thank You  
Administrative Law Division



State of West Virginia  
Department of Tax and Revenue

GASTON CAPERTON  
GOVERNOR

TAX DIVISION  
P. O. Box 2389  
Charleston, WV 25328-2389

JAMES H. PAIGE III  
SECRETARY

PROMULGATION HISTORY

RULE TITLE: Charitable Raffle Boards and Games

TITLE NUMBER: 110

SERIES: 35

NOTICE FILED: July 9, 1994.

HEARING DATE or COMMENT PERIOD: July 9, 1994 - August 9, 1994

EMERGENCY RULE: Approved  
E.R.D. NUMBER: 12-93  
E.R.D. DATE: August 11, 1993

FILED AS AGENCY APPROVED: August 13, 1993

LRMRC ACTION: Modified and approved  
HEARING DATE: November 16, 1993

FILED AS MODIFIED: January 12, 1994

LEGISLATIVE AUTHORIZATION: SB-186

EFFECTIVE DATE: May 1, 1994

LD:JM/lr  
4-15-94

FILED

JAN 12 9 19 AM '94

AGENCY APPROVED

WEST VIRGINIA LEGISLATIVE REGULATIONS

DEPARTMENT OF TAX AND REVENUE

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

TITLE 110

SERIES 35

1993

CHARITABLE RAFFLE BOARDS AND GAMES

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§ 110-35-1. GENERAL.

1.1 Scope. - These regulations clarify and implement state law as it relates to the sale of charitable raffle boards and games authorized by West Virginia Code § 47-23-1 et seq.

1.2 Authority. - West Virginia Code § 47-23-11.

1.3 Filing Date. -

1.4 Effective Date. - July 9, 1993.

§110-35-2. 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 "Commissioner" means Tax Commissioner of the State of West Virginia, or his delegate.

2.2 "Retail value" means the actual consideration paid to the wholesaler by the retailer for any charitable raffle board or game.

2.3 "Person" means any individual, association, society, incorporated or unincorporated organization, firm, partnership, limited liability company or other nongovernmental entity or institution.

2.4 "Retailer" means every person engaged in the business of making retail sales in the State of West Virginia of raffle chances except a charitable or public service organization authorized to conduct raffles pursuant to West Virginia Code Section 47-21-3.

2.4.1 An organization conducting raffles pursuant to Section 47-21-3 is one that is prohibited from awarding any single prize with a value in excess of \$1,000.00. Additionally, the cumulative total gross proceeds from all raffle occasions held by such an organization during any calendar year may not exceed \$7,500.00.

2.5 "Charitable raffle board" or "charitable raffle game" means:

2.5.1 A board or other device that has many folded printed slips to be pulled from or punched out of the board or otherwise distributed without a board on payment of a nominal sum in an effort to obtain a slip or chance that entitles the player to a designated prize;

2.5.2 A series of paper cards with perforated break-open tabs, a face value of which is covered or hidden from view to conceal one or more numbers, letters or symbols, which, on payment of a nominal sum, entitles the players to obtain a chance to a designated prize; or

2.5.3 Such other similar game which may be defined by the Tax Commissioner. The activities which are covered by this definition are commonly referred to as tips, tip boards, tip jugs, jar tickets, punch boards, pull tabs, seal cards, as well as the many variations of those games.

2.5.4 Not included in this definition are slips of paper or other printed tickets which may be purchased from an office supply store or printing company sold or distributed as chances on a prize. For example, a raffle licensee may hold a raffle and sell chances which are printed on slips of paper by the licensee. In such a situation, the slips of paper would not fall within the definition of "charitable raffle board" or "charitable raffle game" as provided in Article 47-23. However, if the raffle licensee purchased a tip board for the purpose of conducting a raffle occasion, the tip board would fall within the definition.

2.6 "Sale" means the transfer of the ownership of tangible personal property for a consideration.

2.7 "Verification" means a unique manufacturer identifiable serial number which is required to be printed on each ticket in a charitable raffle board or charitable raffle game or such other form of identification as may be prescribed by the Tax Commissioner upon a showing of undue hardship by the taxpayer under Section 110-35-11 of these regulations.

2.7.1 A unique manufacturer identifiable serial number is a serial number unique to the specific game being sold which is printed on each ticket in a charitable raffle board or charitable raffle game along with the name or logo of the manufacturer of the game.

2.8 "Wholesaler" or "distributor" means any person or entity engaged in the wholesale distribution of charitable raffle boards or games or similar boards or devices, as defined by the Commissioner, and licensed under the provisions of Article 47-23, to distribute said devices to charitable raffle boards or games retailers. Also included is anyone who is engaged in the manufacturing, packaging, preparing or repackaging of charitable raffle boards or games for distribution in this State.

**§110-35-3. Fees.**

3.1 Wholesalers or distributors of charitable raffle boards and games to retailers shall be licensed and a license fee in the amount of \$500 shall be paid to the Commissioner by each wholesaler or distributor for an annual license.

3.1.1 A single license fee of \$500 shall be paid to the Commissioner regardless of whether a person is engaged in multiple activities, e.g. manufacturing, packaging, preparing, repackaging, wholesaling and distributing charitable raffle boards and games.

3.2 Wholesalers and distributors shall pay a fee in the amount of 20% of retail value of each charitable raffle board or game sold to a retailer. This fee shall be in addition to the Consumers Sales and Service Tax imposed by West Virginia Code § 11-15-1 et seq.

3.2.1 A wholesaler or distributor must pay the 20% fee and collect 6% consumers sales and service tax from a retailer unless:

3.2.1.1 The wholesaler or distributor obtains from the retailer a West Virginia sales tax exemption certificate (CST-280) in which case only the 20% fee is paid.

3.2.1.2 The wholesaler or distributor obtains from the retailer a copy of the exemption document (RAF-3) authorized under West Virginia Code Section 47-21-3 in which case only the 6% consumers sales and service tax is collected (unless a West Virginia Sales Tax Exemption Certificate (CST-280) is obtained, in which case no 6% consumers sales and service tax is collected).

3.2.2 Manufacturers who sell charitable raffle boards and games to wholesalers or distributors who are not retailers will not pay the 20% fee on the retail value of such charitable raffle boards and games. However, manufacturers must collect the 6% consumers sales and service tax unless a West Virginia sales tax exemption certificate (CST-280) is obtained from the wholesaler or distributor, or unless the sale does not occur in West Virginia.

3.3 All revenue from the foregoing fees shall be placed in the special revenue account established under the authority of West Virginia Code § 11-9-2a.

**§110-35-4. No fee on charitable raffle boards and games by municipalities or other governmental subdivisions.**

No municipality or governmental subdivision may levy any excise or other tax or fee requiring charitable raffle boards or games to be stamped, or requiring licenses for sale thereof, other than licenses which may be imposed as a result of licenses provided for in West Virginia Code § 11-12-1 et seq.

**§110-35-5. Reserved.**

**§110-35-6. Reserved.**

**§110-35-7. Surety bonds required; release of surety; new bond.**

7.1 Wholesalers and distributors will be required to file a continuous surety bond when ordered to do so by the Tax Commissioner.

7.1.1 The Tax Commissioner may order the filing of a continuous surety bond where non-compliance with the requirements of article twenty-three, chapter forty seven of the West Virginia Code has occurred or the financial instability of the wholesaler or distributor has been documented.

7.1.2 Upon notification of the completion of the filing of a surety bond an annual notice of renewal, only, is required. The surety must be authorized to engage in business within this State. The bond shall be conditioned upon faithfully complying with the provisions of West Virginia Code § 47-23-1 et seq. and these regulations, and the filing of the returns and payment of all fees prescribed by said Section 47-23-1 et seq.

7.3 Any surety on a bond furnished hereunder shall be released and discharged from all liability accruing on such bond after the expiration of 60 days from the date the surety submitted by certified mail, to the Tax Commissioner, a written request to be discharged. The request shall not relieve, release or discharge the surety from liability already accrued or which shall accrue before the expiration of the sixty-day period. Whenever any surety shall seek release from liability, it shall be the duty of the wholesaler or distributor to supply the Commissioner with another bond which shall become effective on or before the expiration of the aforementioned 60 day period or seek discharge from the order of the Commissioner mandating such surety bond.

**§ 110-35-7a. Requirement of wholesalers and distributors to be licensed to do business in State; resident agent requirement.**

7a.1 In addition to being licensed in accordance with West Virginia Code § 47-23-3 and Section 3 of these regulations, any wholesaler or distributor supplying charitable raffle boards or games to retailers in this State must be registered to do business in this State pursuant to the provisions of West Virginia Code § 11-12-1 et seq.

7a.2 Nonresidents otherwise complying with the provisions of Article 47-23 may be licensed as wholesalers or distributors of charitable raffle boards or games upon designating to the Tax Commissioner a resident agent upon whom notices, orders or other communications issued pursuant to such article may be served and upon whom process may be served.

**§110-35-8. How fee paid; reports required; due date; records to be kept; inspection of records and stocks; examination of witnesses, summons, etc.**

8.1 The retail value fee imposed by West Virginia Code § 47-23-3 and these regulations shall be paid by each licensed wholesaler or distributor to the Commissioner on or before the twentieth day of April, July, October and January for the immediately preceding three calendar months.

8.2 The measure of the fee on the retail value of charitable raffle boards and games shall be determined by multiplying the total amount of the retail value of all charitable raffle boards and games sold by wholesalers or distributors to retailers during the said three-month period by 20%.

8.3 The fee imposed on the retail value of charitable raffle boards and games shall be in addition to the Consumers Sales and Service Tax imposed by West Virginia Code § 11-15-1 et seq. and collected by wholesalers or distributors on sales to retailers who do not furnish a West Virginia sales tax exemption certificate (CST-280) to the wholesaler or distributor.

8.4 All fees due and owing to the Commissioner by reason of West Virginia Code § 47-23-1 et seq. and these regulations, if paid after the due dates required by Section 47-23-8 and this section, shall be subject to the provisions of West Virginia Code § 11-10-1 et seq., (the West Virginia Tax Administration and Procedures Act).

8.5 Each wholesaler or distributor shall provide with each quarterly payment of fees a return covering the business transacted in the previous three calendar months and providing such other information as the Commissioner may deem necessary for the ascertainment or assessment of the required fee. Such return shall be signed under penalty of perjury on such forms as the Tax Commissioner may prescribe and the wholesaler or distributor shall at the time of filing remit all fees owed or due.

8.5.1 All returns prescribed in West Virginia Code § 47-23-8 and this section are required, although a fee might not be due nor any business transacted for the period covered by the return.

8.6 Each person required to file a return shall make and keep such records as are necessary to substantiate the required returns. Necessary records include, but are not limited to, invoices, serial numbers or other verification, inventories, receipts, disbursements, and sales tax exemption certificate, for a period of not less than three (3) years, or the period open to review in the case of waiver of the statute of limitations, whichever is longer.

8.7 Unless otherwise authorized in writing by the Commissioner pursuant to Section 110-35-11 of these regulations, each delivery ticket or invoice for each purchase or sale, whether in cash or otherwise, of charitable raffle boards or games must be recorded upon a serially numbered original invoice showing the name and address of the seller and the purchaser, the point of delivery, the date, quantity, description, serial number and price of the product sold, and such other reasonable information as the Commissioner may require. The fee must be stated separately from the quantity and price of the product sold.

8.7.1 Manufacturers who sell charitable raffle boards and games to West Virginia wholesalers and distributors are required to generate such invoices.

8.7.2 Such original invoice must remain with the charitable raffle boards or games while the product is in the possession of the distributor, wholesaler or retailer, or while the product is being transported to a destination in the State of West Virginia.

8.8 The Commissioner is authorized by West Virginia Code § 47-23-8 and these regulations to inspect or examine the stock of charitable raffle boards and games kept in and upon the premises of any person where charitable raffle boards and games are placed, stored or sold. Furthermore he or she is authorized to inspect or examine the records, books, papers and any equipment or records of manufacturers, wholesalers and distributors or any other person for the purpose of determining the quantity of charitable raffle boards and games acquired or disbursed to verify the truth and accuracy of any statement or return and to ascertain whether the required fee has been properly paid.

8.9 To assist in obtaining records, books and papers and ascertaining the amount of fees and returns due, the Commissioner has the power to examine witnesses under oath; and if the witness fails or refuses to grant the Commissioner access to the books, records or papers, the Commissioner shall certify the facts and names to the circuit court of the county having jurisdiction of

the party and such court shall thereupon issue summons to such party to appear before the Commissioner, at a place designated within the jurisdiction of such court, on a day fixed, to be continued as the occasion may require for good cause shown and give such evidence and lay open for inspection such books and papers as may be required for the purpose of ascertaining the amount of any fee and returns due.

**§110-35-9. Penalty for failure to file return when no fee due; crimes; other offenses; penalties; seizures of illegal boards and games; disposition.**

9.1 In the case of any failure to make or file a return on the date prescribed when no fee is due, unless it be shown that such failure was due to reasonable cause and not due to willful neglect, West Virginia Code § 47-23-9 imposes a penalty of \$25.00 for each month or fraction thereof that the failure continues.

9.2 If any person:

9.2.1 Makes any false entry upon an invoice or with intent to evade the fee presents any such false entry for the inspection of the Commissioner;

9.2.2 Prevents or hinders the Commissioner from making a full inspection of any place where charitable raffle boards or games subject to the fee are sold or stored or prevents or hinders the full inspection of any required invoices, books, records or papers;

9.2.3 Sells any charitable raffle boards or games in this State on which the applicable fee or tax has not been paid;

9.2.4 Being a retailer in this State, fails to produce on demand by the Commissioner invoices of all charitable raffle boards and games purchased or received by him within three years prior to such demand, unless upon satisfactory proof it is shown that such nonproduction is due to providential or other causes beyond his control;

9.2.5 Being a retailer in this State, purchases or acquires charitable raffle boards and games from any person other than a licensed wholesaler or distributor;

That person shall in accordance with the terms of West Virginia Code § 47-23-9 be guilty of a misdemeanor.

9.3 Any person convicted of violating the provisions of West Virginia Code § 47-23-9(b) shall be confined in the county jail or regional jail for not less than one year, or fined not less than \$1000.00 nor more than \$10,000.00, or both fined and imprisoned.

9.4 Any person who falsely or fraudulently makes, forges, alters or counterfeits any invoice or serial number prescribed by the provisions of West Virginia Code § 47-23-1 et seq. for the purpose of evading the fee, shall be guilty of a felony, and, upon conviction thereof, shall be sentenced to pay a fine of not less than \$5,000.00 nor more than \$10,000.00, or imprisoned in the penitentiary for a term of not less than one year nor more than five years, or both fined and imprisoned.

9.5 Whenever the Commissioner or any peace officer of this State discovers any charitable raffle boards or games subject to the fee and upon which the fee has not been paid, such charitable raffle boards and games shall be deemed to be contraband, and the Commissioner or peace officer of this State, is authorized and empowered to seize and take possession of such charitable raffle boards or games, without a warrant. Such charitable raffle boards and games shall be forfeited to the State, and the Commissioner shall retain the forfeited charitable raffle boards and games until they are no longer needed as evidence in any prosecution of the person from whom the raffle boards and games were seized. The Commissioner may within a reasonable time thereafter destroy such charitable raffle boards and games or sell said boards or games at public auction to the highest bidder: **Provided,** That such seizure and destruction or public auction shall not be deemed to relieve any person from fine or imprisonment. Such destruction may be made in any county the Commissioner deems most convenient and economical. All revenue from the fee shall be deposited in the special revenue account established under the authority of West Virginia Code § 11-9-2a and used to support the investigatory activities provided for therein.

9.6 Magistrates shall have concurrent jurisdiction with any other courts having jurisdiction for the trial of all misdemeanors arising under West Virginia Code § 47-23-1 et seq.

**§110-35-10. Transportation of charitable raffle boards and games; forfeitures and sales of charitable raffle boards, charitable raffle games and equipment; criminal sanctions.**

10.1 Every person who knowingly transports charitable raffle boards or games upon the public highways, waterways, airways, roads or streets of this State and to a destination in this State must have in his actual possession invoices or delivery tickets for such charitable raffle boards or games which show the true name and the complete and exact address of the manufacturer, the true name and complete and exact address of the wholesaler or distributor who is the purchaser, the quantity and description of the charitable raffle boards and games being transported and the true name and complete and exact address of the person who has or shall assume payment of the West Virginia state fee. In the absence of such invoices, delivery tickets or bills of lading, as the case may be, the charitable raffle boards or games so transported, the vehicle or vessel in which the charitable raffle

boards or games are being transported and any paraphernalia or devices used in connection with such, are declared to be contraband goods and may be seized by the Commissioner or by any peace officer of the State without a warrant.

10.2 Anyone who transports charitable raffle boards or games in violation of West Virginia Code § 47-23-10 shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$300.00 nor more than \$5000.00, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

10.3 Charitable raffle boards and games seized under the authority of West Virginia Code § 47-23-10 and Section 10.4 of these regulations shall be forthwith destroyed in the manner provided for in West Virginia Code § 47-23-10 and Section 10.4 of these regulations. The destruction of such charitable raffle games and boards shall not relieve the owner thereof of any action by the Commissioner for violations of West Virginia Code § 47-23-1 et seq.

10.4 The Commissioner shall immediately after any seizure institute a proceeding for the confiscation thereof in the circuit court of the county in which the seizure is made. The court may proceed in a summary manner and may direct confiscation by the Commissioner. Any person claiming to be the holder of a security interest in any vehicle or vessel, the disposition of which is provided for above, may present his petition so alleging and be heard. In the event it appears to the court that the property was unlawfully used by a person other than the claimant, and if the said claimant acquired his security interest in good faith and without knowledge that the vehicle or vessel, was going to be so used, the court shall waive forfeiture in favor of such claimant and order the vehicle or vessel returned to such claimant.

**§110-35-11. Administration; rule-making, required verification.**

11.1 Every charitable raffle board or game printed for use in this State is required to bear on each ticket in each such board or game verification as defined in Section 110-35-2 of these regulations. The Commissioner may waive this requirement on a temporary basis and for a stated period of time for any such manufacturer that can clearly establish that substantial hardship will result from immediate compliance: **Provided**, That such a manufacturer must also obtain from the Commissioner approval to use an agreed-upon alternate form of verification for the period of time of the waiver.

11.2 The Commissioner shall deny an application for a license if he finds that the issuance thereof would be in violation of the provisions of West Virginia Code § 47-23-1 et seq. or these regulations.

11.3 The Commissioner may suspend, revoke or refuse to renew any license issued hereunder for a material failure to maintain required records or file required reports required if the Commissioner finds that said failure will substantially impair the Commissioner's ability to administer the provisions of laws and regulations relating to charitable raffle boards and games.

11.4 The burden of proof in any administrative or court proceeding is on the applicant to show cause why a charitable raffle boards or games wholesaler's or distributor's license should be issued or renewed and on the licensee to show cause why its license should not be revoked or suspended.

**§110-35-12. Severability.**

If any provision of these regulations or the application thereof shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of these regulations, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered and the applicability of such provision to other persons or circumstances shall not be affected thereby.

**§110-35-13. General procedure and administration.**

Each and every provision of West Virginia Code § 11-10-1 et seq. shall apply to the fees imposed by West Virginia Code § 47-23-1 et seq. with like effect as if applicable only to those fees.

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SENATE BILL NO. 216

(By Senators ~~Wendell~~, Anderson, Grubb, Macnaughton  
and ~~Winters~~)

Introduced January 31, 1994; referred to the  
Committee on

~~THE JUDICIARY~~

FINANCE;

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 charitable raffle boards and games.

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. Department of tax and revenue; division of tax; and  
22 state tax commissioner.

23 (a) The legislative rules filed in the state register on the  
24 fifth day of January, one thousand nine hundred eighty-four,

1 relating to the state tax commissioner (appraisal of property for  
2 periodic statewide reappraisals for ad valorem property tax  
3 purposes), are authorized with the amendments set forth below:

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

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

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

22       On page 25, section 11.04(c)(2)(C), entitled "Property Tax  
23 Component," by striking the subsection and inserting in lieu  
24 thereof the following: "(C) Property Tax Component -- This

1 component will be derived by multiplying the assessment rate by  
2 the statewide average of tax rates on Class III property."

3 On page 30, section 11.04(c)(4), entitled "Valuation of  
4 Mined-Out/Unmineable/Barren Coal Properties," by striking the  
5 numbers "\$5.00" and inserting in lieu thereof the following:  
6 "\$1.00."

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

10 On page 53, section 11.05(h) by striking the symbol and  
11 figures "\$5.00" and inserting in lieu the following:  
12 "\$1.00)."

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

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

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

20 On page 110, section 11.08(c)(4) by striking the symbol and  
21 figures "\$5.00" and inserting in lieu thereof the following:  
22 "\$1.00."

23 On page 111, section 11.08(c)(5)(B) by striking the symbol  
24 and figures "\$5.00" and inserting in lieu thereof the following:  
25 "\$1.00."

1 And,

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

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

9 55.02(a)(2)(on page 182.2) line 18, after the word  
10 "profession" strike the words "on his own account" and the  
11 comma(,).

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

16 And,

17 55.12(c)(page 182.36) after the word "for," strike the word  
18 "erroneous."

19 (c) The legislative rules filed in the state register on the  
20 twenty-eighth day of September, one thousand nine hundred  
21 eighty-four, modified by the state tax commissioner to meet the  
22 objections of the legislative rule-making review committee and  
23 refiled in the state register on the fourteenth day of November,  
24 one thousand nine hundred eighty-four, and on the twenty-first  
25 day of March, one thousand nine hundred eighty-five, relating to

1 the state tax commissioner (estimated corporation net income  
2 tax), are authorized.

3 (d) The legislative rules filed in the state register on the  
4 twelfth day of March, one thousand nine hundred eighty-five,  
5 relating to the state tax commissioner (identification and  
6 appraisal of farmland subsequent to the base year of statewide  
7 reappraisal), are authorized and directed to be promulgated with  
8 the following amendments:

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

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

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

16 Page 10.1; Title; following the word "FARMLAND" insert the  
17 words "AND STRUCTURES SITUATED THEREON."

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

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

22 Page 10.2, Section 10.02(a), first sentence; following the  
23 word "farmland" insert the words "and structures situated  
24 thereon."

1 Page 10.3, Section 10.02(b), first sentence; following the  
2 word "farmland" insert the words "and structures situated  
3 thereon." Delete the words "for purposes of the statewide  
4 reappraisal."

5 Page 10.3, Section 10.02(b), last sentence; following the  
6 word "farmland" insert the words "and structures situated  
7 thereon."

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

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

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

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

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

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

5 Page 10.11, Section 10.04, insert the following subdivision:  
6 "(12) Application Form: The application form required to be  
7 filed with the assessor on or before September first of each year  
8 shall require certification that the farm complies with criteria  
9 set forth in Section 10.05(c) of these regulations, and renewal  
10 applications from year to year shall be sufficient upon statement  
11 certifying that no change has been made in the use of farm  
12 property which would disqualify 'farm use' classification for  
13 assessment purposes." Renumber the subdivisions of Section 10.04  
14 following the new 10.04(12); formerly 10.04(12) through  
15 10.04(28), to 10.04(13) through 10.04(29), respectively.

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

20 Page 10.16, Section 10.05, subsection (a), following the  
21 words "land is used for farm purposes" by striking the period and  
22 inserting in lieu thereof a colon and the following: "Provided,  
23 That the true and actual value of all farm used, occupied and  
24 cultivated by their owners or bona fide tenants shall be arrived  
25 at according to the fair and reasonable value of the property for

1 the purpose for which it is actually used regardless of what the  
2 value of the property would be if used for some other purpose;  
3 and that the true and actual value shall be arrived at by giving  
4 consideration to the fair and reasonable income which the same  
5 might be expected to earn under normal conditions in the locality  
6 wherein situated, if rented: Provided, however, That nothing  
7 herein shall alter the method of assessment of lands or minerals  
8 owned by domestic or foreign corporations."

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

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

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

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

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

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

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

1 Page 10.18, Section 10.05, subsection (c), the first sentence  
2 of which is amended in its entirety to read as follows:  
3 "Qualifying farmland and the structures situated thereon shall be  
4 subject to farm use valuation, with primary consideration being  
5 given to the income which the property might be expected to earn,  
6 in the locality wherein situate, if rented."

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

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

14 Page 10.20, Section 10.05(c)(4)(C); following the words  
15 "(1,000) minimum production value" insert the words "or the small  
16 farm five hundred dollars (\$500) minimum production and sale."

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

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

23 "(2) Farm buildings. -- Rental value of farm buildings and  
24 other improvements on the farmland shall be valued by determining  
25 the replacement cost of the building or structure by usual farm

1 construction practices, and farm labor standards and subtracting  
2 therefrom depreciation.1 Both of these determinations shall be  
3 made in accordance with the tax department's real property  
4 appraisal manual2 as filed in the state register in accordance  
5 with chapter 29A of the code of West Virginia, 1931, as amended,  
6 and as it relates to agricultural buildings and structures. One  
7 (1) acre of land shall be assigned to all buildings as a unit  
8 situate on the property, regardless of the actual acreage  
9 occupied by such buildings and shall be appraised at its farm-use  
10 valuation based on the highest class of farmland present on the  
11 farm."

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

14 Page 10.28, Section 10.05(f)(3)(B)(2); following the words  
15 "(50%) of the" insert the word "usual."

16 Page 10.29, Section 10.05(f)(3)(C)(1)(a); following the words  
17 "(50%) or more of the" insert the word "usual."

18 Page 10.29, Section 10.05(f)(3)(C)(1)(b); following the words  
19 "(50%) of the" insert the word "usual."

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

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

1 Page 10.35, Section 10.07(a), first sentence; following the  
2 word "farmland" insert the words "and structures situated  
3 thereon."

4 And,

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

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

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

18 (g) The legislative rules filed in the state register on the  
19 twenty-sixth day of March, one thousand nine hundred eighty-six,  
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 twelfth day of February, one thousand nine  
23 hundred eighty-seven, relating to the state tax commissioner  
24 (review of appraisals by county commissions sitting as  
25 administrative appraisal review boards), are authorized.

1 (h) The legislative rules filed in the state register on the  
2 twenty-sixth day of March, one thousand nine hundred eighty-six,  
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 February, one thousand nine  
6 hundred eighty-seven, relating to the state tax commissioner  
7 (review of appraisals by a circuit court on certiorari), are  
8 authorized with the following amendment:

9 On page 3, §18.3.1 is stricken in its entirety and a new  
10 §18.3.1 is inserted in lieu thereof to read as follows:

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

20 (i) 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 (administrative review of appraisals by the state tax  
2 commissioner), are authorized.

3 (j) The legislative rules filed in the state register on the  
4 eighteenth day of August, one thousand nine hundred eighty-six,  
5 modified by the state tax commissioner to meet the objections of  
6 the legislative rule-making review committee and refiled in the  
7 state register on the twelfth day of February, one thousand nine  
8 hundred eighty-seven, relating to the state tax commissioner  
9 (additional review and implementation of property appraisals),  
10 are authorized.

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

16 (l) The legislative rules filed in the state register on the  
17 eighteenth day of August, one thousand nine hundred eighty-six,  
18 modified by the state tax commissioner to meet the objections of  
19 the legislative rule-making review committee and refiled in the  
20 state register on the tenth day of December, one thousand nine  
21 hundred eighty-six, relating to the state tax commissioner  
22 (registration of transient vendors), are authorized.

23 (m) The legislative rules filed in the state register on the  
24 fourth day of February, one thousand nine hundred eighty-six,  
25 modified by the state tax commissioner to meet the objections of

1 the legislative rule-making review committee and refiled in the  
2 state register on the fourteenth day of January, one thousand  
3 nine hundred eighty-seven, relating to the state tax commissioner  
4 (business and occupation tax), are authorized.

5 (n) The legislative rules filed in the state register on the  
6 fourteenth day of August, one thousand nine hundred eighty-seven,  
7 modified by the state tax commissioner to meet the objections of  
8 the legislative rule-making review committee and refiled in the  
9 state register on the fourth day of November, one thousand nine  
10 hundred eighty-seven, relating to the state tax commissioner  
11 (telecommunications tax), are authorized.

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

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

24 (q) 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 thirteenth day of January, one thousand  
4 nine hundred eighty-eight, relating to the state tax commissioner  
5 (appraisal of property for periodic statewide reappraisals for ad  
6 valorem property tax purposes), are authorized.

7 (r) The legislative rules filed in the state register on the  
8 fourteenth day of August, one thousand nine hundred eighty-seven,  
9 modified by the state tax commissioner to meet the objections of  
10 the legislative rule-making review committee and refiled in the  
11 state register on the twelfth day of January, one thousand nine  
12 hundred eighty-eight, relating to the state tax commissioner  
13 (severance tax), are authorized.

14 (s) The legislative rules filed in the state register on the  
15 second day of September, one thousand nine hundred eighty-eight,  
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 twenty-fourth day of February, one thousand  
19 nine hundred eighty-nine, relating to the state tax commissioner  
20 (solid waste assessment fee), are authorized.

21 (t) The legislative rules filed in the state register on the  
22 twelfth day of August, one thousand nine hundred eighty-eight,  
23 modified by the state tax commissioner to meet the objections of  
24 the legislative rule-making review committee and refiled in the  
25 state register on the twenty-first day of September, one thousand

1 nine hundred eighty-eight, relating to the state tax commissioner  
2 (electronic data processing system network for property tax  
3 administration), are authorized.

4 (u) The legislative rules filed in the state register on the  
5 nineteenth day of September, one thousand nine hundred  
6 eighty-eight, modified by the state tax commissioner to meet the  
7 objections of the legislative rule-making review committee and  
8 refiled in the state register on the twenty-fourth day of  
9 February, one thousand nine hundred eighty-nine, relating to the  
10 state tax commissioner (exemption of property from ad valorem  
11 property taxation), are authorized.

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

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

24 (x) The legislative rules filed in the state register on the  
25 twenty-ninth day of June, one thousand nine hundred eighty-nine,

1 relating to the state tax department (severance tax), are  
2 authorized.

3 (y) The legislative rules filed in the state register on the  
4 fourth day of August, one thousand nine hundred eighty-nine,  
5 modified by the state tax department to meet the objections of  
6 the legislative rule-making review committee and refiled in the  
7 state register on the eleventh day of December, one thousand nine  
8 hundred eighty-nine, relating to the state tax department (solid  
9 waste assessment fee), are authorized.

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

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

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

1 modified by the department of tax and revenue to meet the  
2 objections of the legislative rule-making review committee and  
3 refiled in the state register on the nineteenth day of January,  
4 one thousand nine hundred ninety, relating to the department of  
5 tax and revenue (consumers sales and service tax and use tax),  
6 are authorized with the amendments set forth below:

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

9 On pages eight and nine, Section 2.28.1, after the word  
10 "intellectual" by deleting the word "or" and inserting in lieu  
11 thereof the words "physical and".

12 On page nine, Section 2.28.2, by deleting the words "or  
13 instruction."

14 On page nine, Section 2.28.2, after the word "training" by  
15 adding the word "or".

16 On page nine, Section 2.28.2, by deleting the words "or any  
17 portion of a school curriculum classified as physical education."

18 On page nine, by deleting all of Section 2.28.2.1.

19 On page nine, Section 2.28.2.2, by deleting the section  
20 number.

21 On page nine, Section 2.28.2.2, by deleting the words "or  
22 instruction."

23 On page nine, Section 2.28.2.2, after the word "training" by  
24 adding the word "or".

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

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

6 And,

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

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

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

1 (ee) 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 (corporation net income tax), are authorized.

8 (ff) The legislative rules filed in the state register on the  
9 eleventh day of August, one thousand nine hundred eighty-nine,  
10 modified by the department of tax and revenue to meet the  
11 objections of the legislative rule-making review committee and  
12 refiled in the state register on the eleventh day of December,  
13 one thousand nine hundred eighty-nine, relating to the department  
14 of tax and revenue (soft drinks tax), are authorized.

15 (gg) The legislative rules filed in the state register on the  
16 twenty-first day of February, one thousand nine hundred  
17 ninety-one, relating to the state tax commissioner (business  
18 investment and jobs expansion tax credit, corporations  
19 headquarters relocation tax credit, and small business tax  
20 credit), are authorized.

21 (hh) The legislative rules filed in the state register on the  
22 twentieth day of December, one thousand nine hundred ninety,  
23 modified by the state tax commissioner to meet the objections of  
24 the legislative rule-making review committee and refiled in the  
25 state register on the twenty-sixth day of April, one thousand

1 nine hundred ninety-one, relating to the state tax commissioner  
2 (valuation of timberland and managed timberland), are authorized.

3 (ii) The legislative rules filed in the state register on the  
4 twenty-second day of April, one thousand nine hundred ninety-one,  
5 modified by the state tax commissioner to meet the objections of  
6 the legislative rule-making review committee and refiled in the  
7 state register on the sixteenth day of September, one thousand  
8 nine hundred ninety-one, relating to the state tax commissioner  
9 (bingo rules and regulations), are authorized.

10 (jj) The legislative rules filed in the state register on the  
11 thirty-first day of July, one thousand nine hundred ninety-one,  
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 sixteenth day of September, one thousand  
15 nine hundred ninety-one, relating to the state tax commissioner  
16 (property transfer tax), are authorized.

17 (kk) The legislative rules filed in the state register on the  
18 eighth day of August, one thousand nine hundred ninety-one,  
19 modified by the division of tax to meet the objections of the  
20 legislative rule-making review committee and refiled in the state  
21 register on the seventh day of January, one thousand nine hundred  
22 ninety-two, relating to the division of tax (municipal business  
23 and occupation tax), are authorized with the amendments set forth  
24 below:

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

3 And,

4 On pages forty-six and forty-seven, by renumbering the  
5 remaining subsections.

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

13 On page six, subsection 5.2, in the section heading, by  
14 striking out the word "breakfast" and inserting in lieu thereof  
15 "certain bottled";

16 And,

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

20 (mm) The legislative rules filed in the state register on the  
21 eighth day of August, one thousand nine hundred ninety-one,  
22 modified by the division of tax to meet the objections of the  
23 legislative rule-making review committee and refiled in the state  
24 register on the tenth day of January, one thousand nine hundred

1 ninety-two, relating to the division of tax (corporation net  
2 income tax), are authorized with the amendment set forth below:

3     On page twelve, subdivision 6.4.3, by striking out all of  
4 subdivision 6.4.3.

5     (nn) The legislative rules filed in the state register on the  
6 eighteenth day of June, one thousand nine hundred ninety-one,  
7 modified by the state tax commissioner to meet the objections of  
8 the legislative rule-making review committee and refiled in the  
9 state register on the tenth day of January, one thousand nine  
10 hundred ninety-two, relating to the state tax commissioner  
11 (appraisal of producing and reserve oil and natural gas property  
12 for periodic statewide reappraisals for ad valorem property tax  
13 purposes), are authorized.

14     (oo) The legislative rules filed in the state register on the  
15 ninth day of August, 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 tenth day of January, one thousand nine  
19 hundred ninety-two, relating to the state tax commissioner  
20 (severance tax), are authorized.

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

1 ninety-two, relating to the division of tax (business franchise  
2 tax), are authorized.

3 (qq) The legislative rules filed in the state register on the  
4 eighth day of August, one thousand nine hundred ninety-one,  
5 modified by the division of tax to meet the objections of the  
6 legislative rule-making review committee and refiled in the state  
7 register on the tenth day of January, one thousand nine hundred  
8 ninety-two, relating to the division of tax (exceptions to  
9 confidentiality of taxpayer information and disclosure of certain  
10 taxpayer information), are authorized.

11 (rr) The legislative rules filed in the state register on the  
12 ninth day of August, one thousand nine hundred ninety-one,  
13 modified by the division of tax to meet the objections of the  
14 legislative rule-making review committee and refiled in the state  
15 register on the thirteenth day of January, one thousand nine  
16 hundred ninety-two, relating to the division of tax (consumers  
17 sales and service tax and use tax), are authorized with the  
18 amendments set forth below:

19 On page six, by deleting all of subdivisions 2.25.2 and  
20 2.25.4;

21 On page six, subsection 2.25 by renumbering the remaining  
22 subdivisions;

23 On page forty-five, paragraph 8.1.1.1, after the words  
24 "licensed social workers", by inserting "enrolled agents,  
25 professional foresters,";

1 On page forty-five, paragraph 8.1.1.1, after the word  
2 "electricians", by striking out the words "enrolled agents";

3 On page forty-five, paragraph 8.1.1.1, after the word  
4 "musicians" by striking out the word "auctioneers,";

5 On page fifty-six, subdivision 9.2.19, after the word "laws"  
6 by striking out the colon and inserting the following ", such as,  
7 for example, sales by credit unions under W. Va. Code §31-10-33  
8 the sale of services by owners, trainers or jockeys which are  
9 essential to the effective conduct of a horse or dog racing  
10 meeting under W. Va. Code §19-23-12, or the commission of an  
11 auctioneer licensed under W. Va. Code §19-2C-1 et seq.:";

12 On page one hundred five, subsection 33.5, by striking out  
13 the words "child care";

14 On page one hundred ten, subsection 38.1 after the words  
15 "daily charge.", by inserting the following sentence: "The daily  
16 charge subject to the consumers sales and service tax does not  
17 include complimentary items such as shampoo, coffee and  
18 newspapers given to guests by hotels and motels.";

19 On page one hundred forty-three, subsection 86.1, after the  
20 word "auctioneer" by inserting the following "licensed under W.  
21 Va. Code §19-2C-1 et seq.";

22 On page one hundred forty-three, subsection 86.1, after the  
23 word "is" by inserting the word "not";

1 On page one hundred forty-three, subsection 86.2 after the  
2 word "tax" by inserting the following "on the full sales price of  
3 the sales";

4 On page one hundred forty-three, subsection 86.3, in the last  
5 sentence after the word "services" by inserting the following "by  
6 an auctioneer not licensed in accordance with the W. Va. Code  
7 §19-2C-1 et seq.";

8 On page one hundred forty-three, subsection 86.3, in the last  
9 sentence after the word "sold" by striking out the period and  
10 adding the following ": Provided, That an auctioneer licensed in  
11 accordance with W. Va. Code §19-2C-1 et seq. is not required to  
12 collect sales tax on such fees or commissions.";

13 And,

14 On page one hundred forty-three, subsection 86.4, by striking  
15 out the first sentence and inserting, in lieu thereof, the  
16 following sentence: "An auctioneer is taxable on all of his or  
17 her purchases except purchases for resale."

18 (ss) The legislative rules filed in the state register on the  
19 eighteenth day of September, one thousand nine hundred  
20 ninety-two, relating to the division of tax (bingo), are  
21 authorized.

22 (tt) The Legislature hereby authorizes and directs the  
23 division of tax to amend its rule relating to consumers sales and  
24 service tax and use tax which were filed in the code of state

1 regulations (110 CSR 15) on the twenty-seventh day of April, one  
2 thousand nine hundred ninety-two, with the following amendments:

3 On page fifty-eight, by striking out all of subparagraph  
4 9.3.4.3.d and by renumbering the remaining subparagraph.; and,

5 On page one hundred eight, section 38.1, after the words  
6 "daily charge." by striking out the words "The daily charge  
7 subject to the consumers sales and service tax does not include  
8 complimentary items such as shampoo, coffee and newspapers given  
9 to guests by hotels and motels." and inserting in lieu thereof  
10 the following:

11 "Notwithstanding the fact that persons engaged in the  
12 rendering of a service are required to pay tax on their purchases  
13 for use and/or consumption in rendering such services, the  
14 purchase by hotels, motels, tourist homes and rooming houses of  
15 complimentary items such as shampoos, coffee and newspapers given  
16 to guests by such hotels, motels, tourist homes and rooming  
17 houses are not taxable."

18 (uu) The legislative rules filed in the state register on the  
19 thirteenth day of August, one thousand nine hundred ninety-three,  
20 modified by the division of tax to meet the objections of the  
21 legislative rule-making review committee and refiled in the state  
22 register on the twelfth day of January, one thousand nine hundred  
23 ninety-four, relating to the division of tax (charitable raffle  
24 boards and games), are authorized.

25

1       NOTE: The purpose of this bill is to authorize the Division  
2 of Tax to promulgate legislative rules relating to charitable  
3 raffle boards and games.

4  
5       Strike-throughs indicate language that would be stricken from  
6 the present law, and underscoring indicates new language that  
7 would be added.

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H. B. 4291

(By Delegates Gallagher, Douglas, Compton,  
Huntwork, Burk and Faircloth  
(Introduced January 31, 1994; referred to the  
Committee on Finance then the Judiciary)

A BILL to amend and reenact section six, article seven, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the division of tax to promulgate legislative rules relating to charitable raffle boards and games.

Be it enacted by the Legislature of West Virginia:

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

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

§64-7-6. Department of tax and revenue; division of tax; and state tax commissioner.

(a) The legislative rules filed in the state register on the fifth day of January, one thousand nine hundred eighty-four,

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1 relating to the state tax commissioner (appraisal of property for  
2 periodic statewide reappraisals for ad valorem property tax  
3 purposes), are authorized with the amendments set forth below:

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

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

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

22       On page 25, ~~section~~ 11.04(c)(2)(C), entitled "Property Tax  
23 Component," by striking the subsection and inserting in lieu  
24 thereof the following: "(C) Property Tax Component -- This

1 component will be derived by multiplying the assessment rate by  
2 the statewide average of tax rates on Class III property."

3 On page 30, section 11.04(c)(4), entitled "Valuation of  
4 Mined-Out/Unmineable/Barren Coal Properties," by striking the  
5 numbers "\$5.00" and inserting in lieu thereof the following:  
6 "\$1.00."

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

10 On page 53, section 11.05(h) by striking the symbol and  
11 figures "(\$5.00)" and inserting in lieu the following:  
12 "(\$1.00)."

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

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

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

20 On page 110, section 11.08(c)(4) by striking the symbol and  
21 figures "\$5.00" and inserting in lieu thereof the following:  
22 "\$1.00."

23 On page 111, section 11.08(c)(5)(B) by striking the symbol  
24 and figures "\$5.00" and inserting in lieu thereof the following:  
25 "\$1.00."

1 And,

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

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

9 55.02(a)(2) (on page 182.2) line 18, after the word  
10 "profession" strike the words "on his own account" and the  
11 comma(,).

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

16 And,

17 55.12(c) (page 182.36) after the word "for," strike the word  
18 "erroneous."

19 (c) The legislative rules filed in the state register on the  
20 twenty-eighth day of September, one thousand nine hundred  
21 eighty-four, modified by the state tax commissioner to meet the  
22 objections of the legislative rule-making review committee and  
23 refiled in the state register on the fourteenth day of November,  
24 one thousand nine hundred eighty-four, and on the twenty-first  
25 day of March, one thousand nine hundred eighty-five, relating to

1 the state tax commissioner (estimated corporation net income  
2 tax), are authorized.

3 (d) The legislative rules filed in the state register on the  
4 twelfth day of March, one thousand nine hundred eighty-five,  
5 relating to the state tax commissioner (identification and  
6 appraisal of farmland subsequent to the base year of statewide  
7 reappraisal), are authorized and directed to be promulgated with  
8 the following amendments:

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

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

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

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

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

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

22 Page 10.2, Section 10.02(a), first sentence; following the  
23 word "farmland" insert the words "and structures situated  
24 thereon."

1 Page 10.3, Section 10.02(b), ~~first sentence~~; following the  
2 word "farmland" insert the words "and structures situated  
3 thereon." Delete the words "for purposes of the statewide  
4 reappraisal."

5 Page 10.3, Section 10.02(b), last sentence; following the  
6 word "farmland" insert the words "and structures situated  
7 thereon."

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

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

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

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

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

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

5 Page 10.11, Section 10.04, insert the following subdivision:  
6 "(12) Application Form: The application form required to be  
7 filed with the assessor on or before September first of each year  
8 shall require certification that the farm complies with criteria  
9 set forth in Section 10.05(c) of these regulations, and renewal  
10 applications from year to year shall be sufficient upon statement  
11 certifying that no change has been made in the use of farm  
12 property which would disqualify 'farm use' classification for  
13 assessment purposes." Renumber the subdivisions of Section 10.04  
14 following the new 10.04(12); formerly 10.04(12) through  
15 10.04(28), to 10.04(13) through 10.04(29), respectively.

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

20 Page 10.16, Section 10.05, subsection (a), following the  
21 words "land is used for farm purposes" by striking the period and  
22 inserting in lieu thereof a colon and the following: "Provided,  
23 That the true and actual value of all farm used, occupied and  
24 cultivated by their owners or bona fide tenants shall be arrived  
25 at according to the fair and reasonable value of the property for

1 the purpose for which it is actually used regardless of what the  
2 value of the property would be if used for some other purpose;  
3 and that the true and actual value shall be arrived at by giving  
4 consideration to the fair and reasonable income which the same  
5 might be expected to earn under normal conditions in the locality  
6 wherein situated, if rented: **Provided, however,** That nothing  
7 herein shall alter the method of assessment of lands or minerals  
8 owned by domestic or foreign corporations."

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

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

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

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

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

22 Page 10.17, Section 10.05(B)(12)(A); following the words  
23 "part of" insert the words "or appurtenant to."

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

1 Page 10.18, Section 10.05, subsection (c), the first sentence  
2 of which is amended in its entirety to read as follows:  
3 "Qualifying farmland and the structures situated thereon shall be  
4 subject to farm use valuation, with primary consideration being  
5 given to the income which the property might be expected to earn,  
6 in the locality wherein situate, if rented."

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

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

14 Page 10.20, Section 10.05(c)(4)(C); following the words  
15 "(1,000) minimum production value" insert the words "or the small  
16 farm five hundred dollars (\$500) minimum production and sale."

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

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

23 "(2) Farm buildings. -- Rental value of farm buildings and  
24 other improvements on the farmland shall be valued by determining  
25 the replacement cost of the building or structure by usual farm

1 construction practices, and farm labor standards and subtracting  
2 therefrom depreciation.1 Both of these determinations shall be  
3 made in accordance with the tax department's real property  
4 appraisal manual2 as filed in the state register in accordance  
5 with chapter 29A of the code of West Virginia, 1931, as amended,  
6 and as it relates to agricultural buildings and structures. One  
7 (1) acre of land shall be assigned to all buildings as a unit  
8 situate on the property, regardless of the actual acreage  
9 occupied by such buildings and shall be appraised at its farm-use  
10 valuation based on the highest class of farmland present on the  
11 farm."

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

14 Page 10.28, Section 10.05(f)(3)(B)(2); following the words  
15 "(50%) of the" insert the word "usual."

16 Page 10.29, Section 10.05(f)(3)(C)(1)(a); following the words  
17 "(50%) or more of the" insert the word "usual."

18 Page 10.29, Section 10.05(f)(3)(C)(1)(b); following the words  
19 "(50%) of the" insert the word "usual."

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

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

1 Page 10.35, Section 10.07(a), first sentence; following the  
2 word "farmland" insert the words "and structures situated  
3 thereon."

4 And,

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

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

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

18 (g) The legislative rules filed in the state register on the  
19 twenty-sixth day of March, one thousand nine hundred eighty-six,  
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 twelfth day of February, one thousand nine  
23 hundred eighty-seven, relating to the state tax commissioner  
24 (review of appraisals by county commissions sitting as  
25 administrative appraisal review boards), are authorized.

1 (h) The legislative rules filed in the state register on the  
2 twenty-sixth day of March, one thousand nine hundred eighty-six,  
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 February, one thousand nine  
6 hundred eighty-seven, relating to the state tax commissioner  
7 (review of appraisals by a circuit court on certiorari), are  
8 authorized with the following amendment:

9 On page 3, §18.3.1 is stricken in its entirety and a new  
10 §18.3.1 is inserted in lieu thereof to read as follows:

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

20 (i) 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 (administrative review of appraisals by the state tax  
2 commissioner), are authorized.

3 (j) The legislative rules filed in the state register on the  
4 eighteenth day of August, one thousand nine hundred eighty-six,  
5 modified by the state tax commissioner to meet the objections of  
6 the legislative rule-making review committee and refiled in the  
7 state register on the twelfth day of February, one thousand nine  
8 hundred eighty-seven, relating to the state tax commissioner  
9 (additional review and implementation of property appraisals),  
10 are authorized.

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

16 (l) The legislative rules filed in the state register on the  
17 eighteenth day of August, one thousand nine hundred eighty-six,  
18 modified by the state tax commissioner to meet the objections of  
19 the legislative rule-making review committee and refiled in the  
20 state register on the tenth day of December, one thousand nine  
21 hundred eighty-six, relating to the state tax commissioner  
22 (registration of transient vendors), are authorized.

23 (m) The legislative rules filed in the state register on the  
24 fourth day of February, one thousand nine hundred eighty-six,  
25 modified by the state tax commissioner to meet the objections of

1 the legislative rule-making review committee and refiled in the  
2 state register on the fourteenth day of January, one thousand  
3 nine hundred eighty-seven, relating to the state tax commissioner  
4 (business and occupation tax), are authorized.

5 (n) The legislative rules filed in the state register on the  
6 fourteenth day of August, one thousand nine hundred eighty-seven,  
7 modified by the state tax commissioner to meet the objections of  
8 the legislative rule-making review committee and refiled in the  
9 state register on the fourth day of November, one thousand nine  
10 hundred eighty-seven, relating to the state tax commissioner  
11 (telecommunications tax), are authorized.

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

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

24 (q) 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 thirteenth day of January, one thousand  
4 nine hundred eighty-eight, relating to the state tax commissioner  
5 (appraisal of property for periodic statewide reappraisals for ad  
6 valorem property tax purposes), are authorized.

7 (r) The legislative rules filed in the state register on the  
8 fourteenth day of August, one thousand nine hundred eighty-seven,  
9 modified by the state tax commissioner to meet the objections of  
10 the legislative rule-making review committee and refiled in the  
11 state register on the twelfth day of January, one thousand nine  
12 hundred eighty-eight, relating to the state tax commissioner  
13 (severance tax), are authorized.

14 (s) The legislative rules filed in the state register on the  
15 second day of September, one thousand nine hundred eighty-eight,  
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 twenty-fourth day of February, one thousand  
19 nine hundred eighty-nine, relating to the state tax commissioner  
20 (solid waste assessment fee), are authorized.

21 (t) The legislative rules filed in the state register on the  
22 twelfth day of August, one thousand nine hundred eighty-eight,  
23 modified by the state tax commissioner to meet the objections of  
24 the legislative rule-making review committee and refiled in the  
25 state register on the twenty-first day of September, one thousand

1 nine hundred eighty-eight, relating to the state tax commissioner  
2 (electronic data processing system network for property tax  
3 administration), are authorized.

4 (u) The legislative rules filed in the state register on the  
5 nineteenth day of September, one thousand nine hundred  
6 eighty-eight, modified by the state tax commissioner to meet the  
7 objections of the legislative rule-making review committee and  
8 refiled in the state register on the twenty-fourth day of  
9 February, one thousand nine hundred eighty-nine, relating to the  
10 state tax commissioner (exemption of property from ad valorem  
11 property taxation), are authorized.

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

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

24 (x) The legislative rules filed in the state register on the  
25 twenty-ninth day of June, one thousand nine hundred eighty-nine,

1 relating to the state tax department (severance tax), are  
2 authorized.

3 (y) The legislative rules filed in the state register on the  
4 fourth day of August, one thousand nine hundred eighty-nine,  
5 modified by the state tax department to meet the objections of  
6 the legislative rule-making review committee and refiled in the  
7 state register on the eleventh day of December, one thousand nine  
8 hundred eighty-nine, relating to the state tax department (solid  
9 waste assessment fee), are authorized.

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

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

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

1 modified by the department of tax and revenue to meet the  
2 objections of the legislative rule-making review committee and  
3 refiled in the state register on the nineteenth day of January,  
4 one thousand nine hundred ninety, relating to the department of  
5 tax and revenue (consumers sales and service tax and use tax),  
6 are authorized with the amendments set forth below:

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

9 On pages eight and nine, Section 2.28.1, after the word  
10 "intellectual" by deleting the word "or" and inserting in lieu  
11 thereof the words "physical and".

12 On page nine, Section 2.28.2, by deleting the words "or  
13 instruction."

14 On page nine, Section 2.28.2, after the word "training" by  
15 adding the word "or".

16 On page nine, Section 2.28.2, by deleting the words "or any  
17 portion of a school curriculum classified as physical education."

18 On page nine, by deleting all of Section 2.28.2.1.

19 On page nine, Section 2.28.2.2, by deleting the section  
20 number.

21 On page nine, Section 2.28.2.2, by deleting the words "or  
22 instruction."

23 On page nine, Section 2.28.2.2, after the word "training" by  
24 adding the word "or".

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

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

6 And,

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

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

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

1 (ee) 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 (corporation net income tax), are authorized.

8 (ff) The legislative rules filed in the state register on the  
9 eleventh day of August, one thousand nine hundred eighty-nine,  
10 modified by the department of tax and revenue to meet the  
11 objections of the legislative rule-making review committee and  
12 refiled in the state register on the eleventh day of December,  
13 one thousand nine hundred eighty-nine, relating to the department  
14 of tax and revenue (soft drinks tax), are authorized.

15 (gg) The legislative rules filed in the state register on the  
16 twenty-first day of February, one thousand nine hundred  
17 ninety-one, relating to the state tax commissioner (business  
18 investment and jobs expansion tax credit, corporations  
19 headquarters relocation tax credit, and small business tax  
20 credit), are authorized.

21 (hh) The legislative rules filed in the state register on the  
22 twentieth day of December, one thousand nine hundred ninety,  
23 modified by the state tax commissioner to meet the objections of  
24 the legislative rule-making review committee and refiled in the  
25 state register on the twenty-sixth day of April, one thousand

1 nine hundred ninety-one, relating to the state tax commissioner  
2 (valuation of timberland and managed timberland), are authorized.

3 (ii) The legislative rules filed in the state register on the  
4 twenty-second day of April, one thousand nine hundred ninety-one,  
5 modified by the state tax commissioner to meet the objections of  
6 the legislative rule-making review committee and refiled in the  
7 state register on the sixteenth day of September, one thousand  
8 nine hundred ninety-one, relating to the state tax commissioner  
9 (bingo rules and regulations), are authorized.

10 (jj) The legislative rules filed in the state register on the  
11 thirty-first day of July, one thousand nine hundred ninety-one,  
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 sixteenth day of September, one thousand  
15 nine hundred ninety-one, relating to the state tax commissioner  
16 (property transfer tax), are authorized.

17 (kk) The legislative rules filed in the state register on the  
18 eighth day of August, one thousand nine hundred ninety-one,  
19 modified by the division of tax to meet the objections of the  
20 legislative rule-making review committee and refiled in the state  
21 register on the seventh day of January, one thousand nine hundred  
22 ninety-two, relating to the division of tax (municipal business  
23 and occupation tax), are authorized with the amendments set forth  
24 below:

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

3 And,

4 On pages forty-six and forty-seven, by renumbering the  
5 remaining subsections.

6 (ll) The legislative rules filed in the state register on the  
7 eighth day of August, one thousand nine hundred ninety-one,  
8 modified by the division of tax to meet the objections of the  
9 legislative rule-making review committee and refiled in the state  
10 register on the tenth day of January, one thousand nine hundred  
11 ninety-two, relating to the division of tax (soft drinks tax),  
12 are authorized with the amendments set forth below:

13 On page six, subsection 5.2, in the section heading, by  
14 striking out the word "breakfast" and inserting in lieu thereof  
15 "certain bottled";

16 And,

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

20 (mm) The legislative rules filed in the state register on the  
21 eighth day of August, one thousand nine hundred ninety-one,  
22 modified by the division of tax to meet the objections of the  
23 legislative rule-making review committee and refiled in the state  
24 register on the tenth day of January, one thousand nine hundred

1 ninety-two, relating to the division of tax (corporation net  
2 income tax), are authorized with the amendment set forth below:

3 On page twelve, subdivision 6.4.3, by striking out all of  
4 subdivision 6.4.3.

5 (nn) The legislative rules filed in the state register on the  
6 eighteenth day of June, one thousand nine hundred ninety-one,  
7 modified by the state tax commissioner to meet the objections of  
8 the legislative rule-making review committee and refiled in the  
9 state register on the tenth day of January, one thousand nine  
10 hundred ninety-two, relating to the state tax commissioner  
11 (appraisal of producing and reserve oil and natural gas property  
12 for periodic statewide reappraisals for ad valorem property tax  
13 purposes), are authorized.

14 (oo) The legislative rules filed in the state register on the  
15 ninth day of August, 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 tenth day of January, one thousand nine  
19 hundred ninety-two, relating to the state tax commissioner  
20 (severance tax), are authorized.

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

1 ninety-two, relating to the division of tax (business franchise  
2 tax), are authorized.

3 (qq) The legislative rules filed in the state register on the  
4 eighth day of August, one thousand nine hundred ninety-one,  
5 modified by the division of tax to meet the objections of the  
6 legislative rule-making review committee and refiled in the state  
7 register on the tenth day of January, one thousand nine hundred  
8 ninety-two, relating to the division of tax (exceptions to  
9 confidentiality of taxpayer information and disclosure of certain  
10 taxpayer information), are authorized.

11 (rr) The legislative rules filed in the state register on the  
12 ninth day of August, one thousand nine hundred ninety-one,  
13 modified by the division of tax to meet the objections of the  
14 legislative rule-making review committee and refiled in the state  
15 register on the thirteenth day of January, one thousand nine  
16 hundred ninety-two, relating to the division of tax (consumers  
17 sales and service tax and use tax), are authorized with the  
18 amendments set forth below:

19 On page six, by deleting all of subdivisions 2.25.2 and  
20 2.25.4:

21 On page six, subsection 2.25 by renumbering the remaining  
22 subdivisions;

23 On page forty-five, paragraph 8.1.1.1, after the words  
24 "licensed social workers", by inserting "enrolled agents,  
25 professional foresters,";

1 On page forty-five, paragraph 8.1.1.1, after the word  
2 "electricians", by striking out the words "enrolled agents";

3 On page forty-five, paragraph 8.1.1.1, after the word  
4 "musicians" by striking out the word "auctioneers,";

5 On page fifty-six, subdivision 9.2.19, after the word "laws"  
6 by striking out the colon and inserting the following ", such as,  
7 for example, sales by credit unions under W. Va. Code §31-10-33  
8 the sale of services by owners, trainers or jockeys which are  
9 essential to the effective conduct of a horse or dog racing  
10 meeting under W. Va. Code §19-23-12, or the commission of an  
11 auctioneer licensed under W. Va. Code §19-2C-1 et seq.:";

12 On page one hundred five, subsection 33.5, by striking out  
13 the words "child care";

14 On page one hundred ten, subsection 38.1 after the words  
15 "daily charge.", by inserting the following sentence: "The daily  
16 charge subject to the consumers sales and service tax does not  
17 include complimentary items such as shampoo, coffee and  
18 newspapers given to guests by hotels and motels.";

19 On page one hundred forty-three, subsection 86.1, after the  
20 word "auctioneer" by inserting the following "licensed under W.  
21 Va. Code §19-2C-1 et seq.";

22 On page one hundred forty-three, subsection 86.1, after the  
23 word "is" by inserting the word "not";

1 On page one hundred forty-three, subsection 86.2 after the  
2 word "tax" by inserting the following "on the full sales price of  
3 the sales";

4 On page one hundred forty-three, subsection 86.3, in the last  
5 sentence after the word "services" by inserting the following "by  
6 an auctioneer not licensed in accordance with the W. Va. Code  
7 §19-2C-1 et seq.";

8 On page one hundred forty-three, subsection 86.3, in the last  
9 sentence after the word "sold" by striking out the period and  
10 adding the following ": Provided, That an auctioneer licensed in  
11 accordance with W. Va. Code §19-2C-1 et seq. is not required to  
12 collect sales tax on such fees or commissioners.";

13 And,

14 On page one hundred forty-three, subsection 86.4, by striking  
15 out the first sentence and inserting, in lieu thereof, the  
16 following sentence: "An auctioneer is taxable on all of his or  
17 her purchases except purchases for resale."

18 (ss) The legislative rules filed in the state register on the  
19 eighteenth day of September, one thousand nine hundred  
20 ninety-two, relating to the division of tax (bingo), are  
21 authorized.

22 (tt) The Legislature hereby authorizes and directs the  
23 division of tax to amend its rule relating to consumers sales and  
24 service tax and use tax which were filed in the code of state

1 regulations (110 CSR 15) on the twenty-seventh day of April, one  
2 thousand nine hundred ninety-two, with the following amendments:

3 On page fifty-eight, by striking out all of subparagraph  
4 9.3.4.3.d and by renumbering the remaining subparagraph.; and,

5 On page one hundred eight, section 38.1, after the words  
6 "daily charge." by striking out the words "The daily charge  
7 subject to the consumers sales and service tax does not include  
8 complimentary items such as shampoo, coffee and newspapers given  
9 to guests by hotels and motels." and inserting in lieu thereof  
10 the following:

11 "Notwithstanding the fact that persons engaged in the  
12 rendering of a service are required to pay tax on their purchases  
13 for use and/or consumption in rendering such services, the  
14 purchase by hotels, motels, tourist homes and rooming houses of  
15 complimentary items such as shampoos, coffee and newspapers given  
16 to guests by such hotels, motels, tourist homes and rooming  
17 houses are not taxable."

18 (uu) The legislative rules filed in the state register on the  
19 thirteenth day of August, one thousand nine hundred ninety-three,  
20 modified by the division of tax to meet the objections of the  
21 legislative rule-making review committee and refiled in the state  
22 register on the twelfth day of January, one thousand nine hundred  
23 ninety-four, relating to the division of tax (charitable raffle  
24 boards and games), are authorized.

25

1       NOTE: The purpose of this bill is to authorize the Division  
2 of Tax to promulgate legislative rules relating to charitable  
3 raffle boards and games.

4  
5       Strike-throughs indicate language that would be stricken from  
6 the present law, and underscoring indicates new language that  
7 would be added.



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### STATE OF WEST VIRGINIA

#### SECRETARY OF STATE

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Charleston, WV 25305-0770

RECEIVED  
94 MAY 23 PM 1:58  
STATE DEPARTMENT  
LEGAL DIVISION

TO: John Montgomery

AGENCY: Tax

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: May 2, 1994

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: 35 TITLE: 110 Tax

\* 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 - Legal Division

DATE: 5/11/94

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