

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #6

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: 36

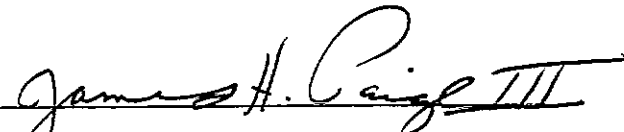
TITLE OF RULE BEING PROPOSED: PRENEED CEMETERY COMPANIES

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(xx), 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

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
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(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 36, Preneed Cemetery Companies**, 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(xx)**. 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

newspapers given to guests by hotels and motels." and inserting in lieu thereof the following:

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

110-16 (uu) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety-three, relating to the division of tax (bingo), are authorized.

110-35 (vv) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety-three, modified by the division of tax to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of January, one thousand nine hundred ninety-four, relating to the division of tax (charitable raffle boards and games), are authorized.

110-130 (ww) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, relating to the division of tax (business investment and jobs expansion tax credit, small business tax credit, corporate headquarters relocation tax credit), are authorized with the amendment set forth below:

On page thirty-nine, section 5.16.3.1, by striking section 5.16.3.1 and inserting in lieu thereof the following:

"This exception shall not be applicable if the taxpayer failed to provide information requested by the Department of Tax and Revenue, or its predecessor, the West Virginia Tax Department, or if the taxpayer had knowledge or should have had knowledge of information necessary for the Department of Tax and Revenue to make an informed analysis and determination pertaining to the actual application of the credit but failed to disclose such information to the Department."

110-36 (xx) The legislative rules filed in the state register on the thirteenth day of August, one thousand nine hundred ninety-three, modified by the division of tax to meet the objections of the legislative rule-making review committee and refiled in the state register on the twelfth day of January, one thousand nine hundred ninety-four, relating to the division of tax (preneed cemetery companies), are authorized with the amendments set forth below:

"On page four, section 3.1, by striking out '\$400.00' and inserting in lieu thereof '\$200.00'."

110-6 (yy) The legislative rules filed in the state register on the sixteenth day of August, one thousand nine hundred ninety-three, relating to the division of tax (pollution control facilities), are authorized with the amendment set forth below:

On page one, section 2.2 after the word "be" by inserting the following: "The definition of facilities eligible for salvage tax treatment shall be strictly construed so as to include only such equipment and devices as are installed primarily and immediately to abate air or water pollution. These items of personal property which may coincidentally comply with air or water quality or effluent standards prescribed by or promulgated under the laws of this state or the United States, but which are primarily installed for plant operations or are productive, or add to the economic value of a business



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: Preneed Cemetery Companies

TITLE NUMBER: 110

SERIES: 36

NOTICE FILED: July 9, 1993

HEARING DATE or
COMMENT PERIOD: July 9, 1993 - August 9, 1993

EMERGENCY RULE DENIED
E.R.D. NUMBER: 16-93
E.R.D. DATE:

FILED AS AGENCY
APPROVED: August 13, 1993

LRMRC
ACTION: Modified, Amended & 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

AGENCY APPROVED

JAN 12 9 21 AM '94

WEST VIRGINIA LEGISLATION REGULATIONS

DEPARTMENT OF TAX AND REVENUE

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

TITLE 110

SERIES 36

1993

PRENEED CEMETERY COMPANIES

§110-36-1. General.

1.1 Scope. - These regulations clarify and implement state law as it relates to property, goods and services purchased by preneed cemetery companies and contracts for services to be rendered by such companies.

1.2 Authority. - W.Va. Code §§ 5F-2-2(a)(11) and 5F-1-1(a)(1).

1.3 Filing Date. -

1.4 Effective Date. -

§110-36-2. 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 and in the plural.

2.1 "Burial vault" means a protective container for a casket which is used to prevent a grave from sinking.

2.2 "Cemetery" means and includes all land and appurtenances including roadways, office buildings, outbuildings and other structures used or intended to be used for or in connection with the interment of human remains: **Provided,** That this definition shall have no effect on the determination of whether real property is exempt from ad valorem property taxation pursuant to West Virginia Code § 11-3-9 and 110 C.S.R. 3. The sprinkling of ashes or their burial in a biodegradable container on church grounds or their placement in a columarium on church property does not constitute the creation of a cemetery.

2.3 "Cemetery company" or "seller" means any person, partnership, firm or corporation engaged in the business of operating a cemetery or selling property, goods or services used

in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or goods or performance of the service may be delayed later than 120 days after receipt of the initial payment on account of such sale. Such property, goods or services include, but are not limited to, burial vaults, mausoleum crypts, lawn crypts, memorials, marker bases and opening and closing and/or interment services, but do not include graves or incidental additions such as dates, scrolls or other supplementary matter representing not more than 10% of the total contract price.

2.4 "Commissioner" or "Tax Commissioner" means the Secretary of the West Virginia Department of Tax and Revenue or his delegate.

2.5 "Compliance agent" means a natural person who owns or is employed by a cemetery company to assure the compliance of the cemetery company with the provisions of West Virginia Code § 35-5B-1 et seq. and these regulations.

2.6 "Cost requirement" means the total cost to the seller of the property, goods or services subject to the deposit requirements of West Virginia Code § 35-5B-4 and these regulations and as required by that seller's total contracts.

2.7 "Delivery" means that the seller has transferred physical possession of the identified goods, has attached or installed such goods at the designated interment space or has actually furnished preneed cemetery company contract services. In the case of preneed goods which are identified with the name of the buyer or other contract beneficiary, "delivery" may also occur when:

2.7.1 The seller pays for and stores the goods at the cemetery where they are intended to be used; or

2.7.2 The seller has paid the supplier of such goods and the supplier has caused such merchandise to be manufactured and stored, has caused title to such merchandise to be transferred to the buyer or other contract beneficiary and has agreed to ship such merchandise upon his or her request.

2.8 "Grave" means a below-ground right of interment.

2.9 "Interment" means the disposition of human remains by earth burial, entombment or inurnment.

2.10 "Lawn crypt" means a burial receptacle, usually constructed of reinforced concrete, installed underground in a quantity of gravel or with tile underlay. Each crypt becomes an integral part of the given garden area and is considered real property.

2.11 "Marker base" means the visible part of the base or foundation upon which the memorial, marker or monument rests and is considered personal property.

2.12 "Mausoleum crypt" means a burial receptacle usually constructed of reinforced concrete and usually constructed or assembled above the ground and is considered real property.

2.13 "Memorials, markers or monuments" means the object used to identify the deceased including the base and is considered personal property.

2.14 "Opening and closing or interment service" means any service associated with the excavation and filling in of a grave in a manner which will not disturb or invade adjacent grave sites: **Provided**, That even if adjacent grave sites are unintentionally disturbed or invaded, the excavation and filling in of a grave shall fall within the meaning of this definition.

2.15 "Person" includes any state, and its political subdivisions or an agency of either, the State of West Virginia and its political subdivisions or an agency of either, and any individual, firm, partnership, joint venture, joint stock company, any public or private corporation, municipal corporation, cooperative, estate, trust, business trust, receiver, executor, administrator, any other fiduciary, any representative appointed by order of any court or otherwise acting on behalf of other, or any other group or combination acting as a unit.

2.16 "Preneed" means at any time other than either at the time of death or while death is imminent.

2.17 "Preneed cemetery company contract" or "contract" means a contract for the sale of real and personal property, goods or services used in connection with interring or disposing of the remains or commemorating the memory of a deceased human being, where delivery of the property or performance of the service may be delayed for more than 120 days after the receipt of initial payment on account of such sale. Such property, goods or services include, but are not limited to, burial vaults, mausoleum crypts, lawn crypts, memorials, marker bases and opening and closing and/or interment services, but do not include graves or incidental additions such as dates, scrolls or other supplementary matter representing not more than 10% of the total contract price.

2.18 "Seller's trust account" means the trust account established for the specific seller and into which is deposited the total specific funds from all of a specific seller's contracts, plus income on such funds allotted to that seller.

2.19 "Specific trust funds" means funds identified with a certain preneed cemetery company contract for personal property, goods or services.

2.20 "Trustee" means any natural person, partnership or corporation, including any bank, trust company, broker-dealer, foreign state chartered trust, savings and loan association or credit union which receives money in trust pursuant to any agreement or contract made pursuant to the provisions of West Virginia Code § 35-5B-1 et seq. and these regulations.

§110-36-3. Information filing; fees, compliance agent.

3.1 On or after July 1, 1993 and to the extent one of the exemptions in Section 4 of these regulations does not apply, no person, partnership, firm or corporation may engage in the business of operating a cemetery company in this state without having first paid to the Tax Commissioner an annual registration fee in the amount of \$400.00, and filing with the Tax Commissioner on the form specified certain information which shall include the names and addresses of all officers, owners and directors of the cemetery company and the name of the designated compliance agent. The cemetery company shall notify the Tax Commissioner of any changes in the information required to be filed within 90 days of the date on which the change occurs.

3.2 A new filing shall also be required if there is a change in the ownership of the cemetery company or if there is a change in the name of the compliance agent designated by the cemetery company. The cemetery company shall pay to the Tax Commissioner an additional fee of \$100.00 when reporting any such changes.

3.3 All fees collected under the authority of West Virginia Code § 35-5B-1 et seq. and these regulations shall be deposited in the "Cemetery Company Account" created in the State Treasury.

3.3.1 Amounts collected which are found from time to time to exceed the funds needed may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature.

3.3.2 Funds in this account shall be expended upon appropriation of the Legislature by the Secretary of Tax and Revenue in connection with the administration of West Virginia Code § 35-5B-1 et seq. and these regulations.

§110-36-4. Exemptions.

The provisions of West Virginia Code § 35-5B-1 et seq. and the regulations do not apply to:

4.1 Sales of property, goods and services subject to the provisions of West Virginia Code § 47-14-1 et seq.;

4.2 Sales of services by perpetual care cemeteries subject to the provisions of West Virginia Code § 35-5A-1 et seq.;

4.3 Sales of property, goods and services by cemeteries owned and operated by a county, municipal corporation, church or nonstock corporation not operated for profit if the cemetery:

4.3.1 Does not compensate any officer or director except for reimbursement of reasonable expenses incurred in the performance of official duties;

4.3.2 Does not sell or construct or directly or indirectly contract for the sale or construction of vaults or lawn or mausoleum crypts; and

4.3.3 Uses proceeds from the sale of all graves and entombment rights for the sole purpose of defraying the direct expenses of maintaining the cemetery;

4.4 Sales of property, goods and services by community cemeteries not operated for profit if the cemetery:

4.4.1 Does not compensate any officer, owner or director except for reimbursement of reasonable expenses incurred in the performance of official duties; and

4.4.2 Uses the proceeds from the sale of the graves for the sole purpose of defraying the direct expenses of maintaining its facilities; and

4.5 Sales of property, goods and services by family cemeteries wherein lots or spaces are neither offered for public sale nor sold to the public.

4.6 Any person which otherwise would be exempt from the provisions of West Virginia Code § 35-5B-1 et seq. and these regulations ceases to retain such exemption when selling preneed cemetery company contracts.

§110-36-5. Deposit in preneed trust required; who may serve as trustee.

5.1 Each cemetery company shall deposit into an interest bearing trust fund 40% of the receipts from the sale of property, goods or services purchased pursuant to a preneed cemetery company contract, including sales of opening and closing or interment services, when the anticipated delivery thereof will be delayed more than 120 days from the initial payment on said contract. However, should the proceeds from the sale be financed through a lending institution, it shall be considered a cash sale. Deposits are required to be made by the cemetery company within 30 days after the close of the month in which said receipts are paid to it.

5.1.1 When depositing sales receipts into the trust fund, the seller may combine the receipts from different contracts into one deposit: **Provided**, That the seller shall maintain appropriate records which specify the amounts deposited relative to the identified contracts and that the trustee is provided with such information.

5.2 If payment is made on an installment or deferred payment basis, the seller shall have the option of initially depositing into the trust fund 40% of the amount of the principal, or in the alternative, depositing 40% of the principal of each payment within 30 days after the close of the month in which said payments are received.

5.3 The trustee of the trust fund shall be appointed by the person owning, operating, or developing a preneed cemetery company. If the trustee is other than a bank, savings and loan or other federally insured investment banking institution, the trustee shall be approved by the Tax Commissioner. A trustee that is not a bank, savings and loan or other federally insured investment banking institution shall apply to the Tax Commissioner for approval. The Tax Commissioner shall approve the trustee when satisfied that:

5.3.1 The applicant employs and is directed by persons who are qualified by character, experience, and financial responsibility to care for and invest the funds of others; and

5.3.2 The applicant will perform its duties in a proper and legal manner and the trust funds and interest of the public generally will not be jeopardized.

5.4 If the trustee is other than a bank, savings and loan or other federally insured investment banking institution, the trustee shall furnish a fidelity bond with the corporate surety thereon licensed to do business in this State, payable to the trust established, in a sum equal to but not less than 100% of the value of the principal of the trust estate at the beginning of each calendar year, which bond shall be deposited with the Tax Commissioner: **Provided**, That the amount of such bond shall not be less than one hundred thousand dollars (\$100,000.00).

5.3.4 If the trustee is other than a bank, savings and loan or other federally insured investment banking institution, and if it appears that an officer, director or employee of the trustee is dishonest, incompetent or reckless in the management of a trust fund required by the provisions of West Virginia § 35-5B-1 et seq. and these regulations, the Tax Commissioner may bring an action in the circuit courts of this State to remove the trustee and to impound the property and business of the trustee as may be reasonably necessary to protect the trust funds.

§110-36-6. Requirements for preneed cemetery company contracts.

A preneed cemetery company contract shall:

6.1 Be written in clear understandable language and printed in easy-to-read type, size and style;

6.2 Identify the seller, the contract buyer and the person for whom the contract is purchased if other than the contract buyer;

6.3 Contain a complete description of the property, goods or services purchased;

6.4 Clearly disclose whether the price of the property, goods or services purchased is guaranteed;

6.5 Provide that if the particular property, goods and services specified in the contract are unavailable at the time of delivery, the seller shall be required to furnish property, goods and services similar in size and style and at least equal in quality of material and workmanship and that the representative of the deceased has the right to reasonably choose the property, goods or services to be substituted; and

6.6 Be executed in duplicate and a signed copy given to the buyer.

§110-36-7. Identification of funds.

Any funds deposited in the seller's trust account shall be identified in the records of the trustee and the seller by the contract number and by the name of the buyer. The trustee may commingle the deposits in any preneed trust account for the purposes of the management thereof and the investment of funds therein.

§110-36-8. Corpus of trust account and income to remain in preneed trust account; exception.

The corpus of the seller's trust account shall remain intact until the property or goods are delivered or services performed as specified in the contracts which comprise such trust account: **Provided,** That the net income from the preneed trust account may be used to pay any appropriate trustee and auditor fees, commissions and costs. The net income from the preneed trust account, after payment of any appropriate trustee and auditor fees, commissions and costs, shall remain in the account and be reinvested and compounded. Any trustee fees, commissions and costs in excess of income shall be paid by the cemetery company and not from the trust. However, the trustee shall, as of the close of the cemetery company's fiscal year, upon the written assurance to the trustee by a certified public accountant employed by the seller, return to the seller any income in the seller's account which, when added to the corpus of the trust account is in excess of the current cost requirements for all

undelivered property, goods or services included in the seller's preneed cemetery company contracts including all outstanding preneed cemetery company contracts entered into prior to July 1, 1993. The seller's cost requirements shall be based upon wholesale cost to the seller and shall be certified in its records by a sworn affidavit by the compliance agent and determined by the seller as of the close of the cemetery company's fiscal year.

§110-36-9. Disbursement of trust funds upon performance of contract; mausoleum construction required.

9.1 Upon performance of the preneed cemetery company contract, the seller shall certify to the trustee by affidavit the amount of specific funds in the trust, identified with the contract performed, which the trustee shall pay to the seller. The seller may in its records itemize the property, goods or services and the consideration paid or to be paid therefore, to which the established deposit requirements apply. In such case the seller may, upon certification to the trustee of performance or delivery of such property, goods or services and of the amount of specific trust funds identified in its records with such items, request disbursement of that portion of the specific funds deposited pursuant to the contract, which the trustee shall pay to the seller.

9.1.1 When disbursing funds to the seller for payment on more than one preneed cemetery company contract, the trustee may combine all such payments into one payment: **Provided**, That the trustee maintains appropriate records which identify that portion of the total payment which is applied to the identified preneed cemetery company contract and such information is provided to the seller, **Provided**, However, That the seller may net out funds received from sales and funds to be paid for expenses incurred by depositing only the amount in excess of the disbursements and utilizing the remaining funds for payment of contract expenses: **Provided** further, That when utilizing the netting out method for recording activities, complete documentation of the transactions must be retained by the seller and provided to the trustee.

9.1.2 When disbursing funds received from the trustee, the seller may combine into one payment the amounts to be paid to a single payee: **Provided**, That the seller maintains appropriate records which specify that portion of the payment which is applied to the identified preneed cemetery company contract and such information is provided to the payee.

9.2 If the preneed contract provides for two or more persons, the seller may, at its option, designate in its records the consideration paid for each individual in the preneed cemetery company contract. In such case, upon performance of that portion of the contract identified with a particular individual, the seller may request, by certification in the manner described

above, the disbursement of trust funds applicable to that portion of the contract, which the trustee shall pay to the seller.

9.3 Any cemetery company that sells space in an unconstructed mausoleum must commence construction within 7 years from the date of the first sale or when 80% of the spaces in the original mausoleum plan are sold, whichever occurs first.

9.3.1 Because the preneed cemetery company contract is purchased from the seller and not from the contractor constructing the mausoleum, the cemetery company is the person that contracts with and pays the contractor for construction of the structure.

9.3.2 The cost of constructing a mausoleum shall be borne by the cemetery company: **Provided**, That if preneed cemetery company contracts are used to sell space in the mausoleum, the proceeds from such sales must be accounted for in the same manner as the proceeds from the sale of other contracts.

9.3.3 Once mausoleum construction has commenced, the cemetery company is authorized to draw down progress payments from the trust funds received from the sale of the mausoleum spaces funds to pay for the construction: **Provided**, That such progress payments are according to a schedule incorporated into the construction contract: **Provided**, However, That the cemetery company must bear any construction expense in excess of the trust funds available from the sale of spaces in the mausoleum being constructed.

§110-36-10. Seller required to keep records.

Each seller of a preneed cemetery company contract shall record and keep detailed accounts of each and every contract and of all transactions regarding each preneed cemetery company contract. All such records shall be subject to examination by the Tax Commissioner.

§110-36-11. Financial report and written assurance required.

11.1 The cemetery company shall report the following information to the Tax Commissioner within 4 months following the close of the cemetery company's fiscal year:

11.1.1 The total amount of principal in the seller's trust account;

11.1.2 The securities in which the seller's trust account is invested;

11.1.3 The income received from the trust and the source of that income during the preceding fiscal year;

11.1.4 An affidavit executed by the compliance agent that all provisions of West Virginia Code § 35-5B-1 et seq. and these regulations which are applicable to the seller and which relate to the seller's trust accounts have been complied with;

11.1.5 The total receipts required to be deposited in the seller's trust account;

11.1.6 All expenditures from the seller's trust account;
and

11.1.7 If the trustee is other than a bank, savings and loan or other federally insured investment banking institution, proof, in a manner determined by the Tax Commissioner, that the required fidelity bond has been secured and that it is in effect.

11.1.8 Appropriate documentation provided by the trustee may be utilized to support the foregoing information.

11.2 The cemetery company shall employ an independent certified public accountant who is to audit the account and provide assurance, which assurance shall be forwarded with the foregoing required report, that 40% of the cash receipts from the sale of preneed property, goods or services which is not anticipated to be delivered or performed within 120 days after receipt of the initial payment on account has been deposited in the account within 30 days after the close of the month in which such payments were received.

§110-36-12. Inclusion of property, goods and services to be delivered within one hundred twenty days.

The contract may include the sale of preneed property, goods or services to be delivered within 120 days after the receipt of the initial payment on account of such sale. Contracts may specify separately the total consideration paid or to be paid for preneed property, goods or services not anticipated to be delivered or provided within 120 days after receipt of initial payment. If a contract does not specify the preneed property, goods or services not anticipated to be delivered or provided within the 120 day period, the seller shall deposit 40% of the total consideration for the entire contract.

§110-36-13. Breach of contract by seller; trust to be single purpose trust.

13.1 If, after a written request, the seller fails to perform its contractual duties, the purchaser, executor or administrator of the estate, or heirs, or assigns or duly authorized representative of the purchaser shall be entitled to maintain a proper legal or equitable action in any court of competent jurisdiction. No other purchaser need be made a party to or receive notice of any proceeding brought relating to the performance of any other contract.

13.2 The seller's trust shall be a single purpose trust. The trust funds shall not be available to any creditors as assets of the seller, nor may the seller encumber any portion of the trust funds.

§110-36-14. Trustee may rely on certifications and affidavits.

The trustee may rely upon all certifications and affidavits which have been made pursuant to the provisions of West Virginia Code § 35-5B-1 et seq. and these regulations and is not liable to any person for such reasonable reliance.

§110-36-15. Transfer of trust funds to another trustee.

15.1 The seller may, upon notification in writing to the trustee, and upon such other terms and conditions as the agreement between them may specify, transfer its account funds to another qualified trustee. The trustee may, upon notification in writing to the seller, and upon such other terms and conditions as the agreement between them may specify, transfer the trust funds to another qualified trustee.

15.2 Notwithstanding any terms or conditions of any agreement between the seller and the trustee to the contrary, if either the seller or the trustee transfers the seller's trust account to another qualified account, the trustee may not retain and the seller may not pay any portion of the trust funds as payment for any penalty or for any other reason related to such transfer.

§110-36-16. Use of trustee's name in advertisements.

No person subject to the provisions of West Virginia Code § 35-5B-1 et seq. or these regulations may use the name of the trustee in any advertisement or other public solicitation without written permission of the trustee.

§110-36-17. Cemetery property maintained by cemetery company.

With respect to cemetery property maintained by a cemetery company, the cemetery company is responsible for the performance of:

17.1 The care and maintenance of the cemetery property it owns; and

17.2 The opening and closing of all graves, crypts or niches for human remains in any cemetery property it owns.

§110-36-18. Waiver of article void.

Any provision of any contract which purports to waive any provision of West Virginia Code § 35-5B-1 et seq. or these regulations is void.

§110-36-19. Violation a misdemeanor.

19.1 Any person who violates any of the provisions of West Virginia Code § 35-5B-1 et seq. is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000 for each occurrence, or incarcerated in the county or regional jail for a term not to exceed one year, or both fined and incarcerated.

19.2 Any person who violates any of the provisions of West Virginia Code § 35-5B-1 et seq. shall for a second offense be guilty of a felony and, upon conviction thereof, shall be fined not less than \$500 nor more than \$3,000, or incarcerated in the penitentiary not less than one nor more than three years, or, in the discretion of the court, be incarcerated in the county jail for a term not to exceed one year.

SENATE BILL NO. 215

(By _____, Anderson, Grubb, Macnaughton)

January 31, 1994; referred to the

~~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 preneed cemetery companies.

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 as 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 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 (preneed cemetery
24 companies), are authorized with the amendments set forth below:

1 "On page four, section 3.1, by striking out '\$400.00' and
2 inserting in lieu thereof '\$200.00'."

3

4 NOTE: The purpose of this bill is to authorize the Division
5 of Tax to promulgate legislative rules relating to preneed
6 cemetery companies.

7

8 Strike-throughs indicate language that would be stricken from
9 the present law, and underscoring indicates new language that
10 would be added.

2/10/17

H. B. 4292

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

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

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,

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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 (preneed cemetary
24 companies), are authorized with the amendments set forth below:

1 "On page four, section 3.1, by striking out '\$400.00' and
2 inserting in lieu thereof '\$200.00'."

3

4 NOTE: The purpose of this bill is to authorize the Division
5 of Tax to promulgate legislative rules relating to preneed
6 cemetery companies.

7

8 Strike-throughs indicate language that would be stricken from
9 the present law, and underscoring indicates new language that
10 would be added.



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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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

RECEIVED
94 JUL -5 PM 2:52
STATE OF WEST VIRGINIA
LEGAL DIVISION

TO: John Montgomery

AGENCY: Tax Dept.

FROM: JUDY COOPER, DIRECTOR, ADMINISTRATIVE LAW DIVISION

DATE: July 1, 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: 36 TITLE: 110 Tax Dept.

* 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 P. Montgomery

TITLE OF PERSON SIGNING: Attorney Legal Division

DATE: 7/16/94

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