

**WEST VIRGINIA
SECRETARY OF STATE
NATALIE E. TENNANT
ADMINISTRATIVE LAW DIVISION**

Form #3

Do Not Mark In This Box

FILED

2014 JUL 31 A 11:43

OFFICE WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE
AND
FILING WITH THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE**

AGENCY: State Tax Department TITLE NUMBER: 110

CITE AUTHORITY: W. Va. Code §11-3-1

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 RULE BEING PROPOSED: 1Q

TITLE OF RULE BEING PROPOSED: Appointment of Special Assessors by State Tax Commissioner

THE ABOVE PROPOSED LEGISLATIVE RULE HAVING GONE TO A PUBLIC HEARING OR A PUBLIC COMMENT PERIOD IS HEREBY APPROVED BY THE PROMULGATING AGENCY FOR FILING WITH THE SECRETARY OF STATE AND THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE FOR THEIR REVIEW.



Authorized Signature

QUESTIONNAIRE

(Please include a copy of this form with each filing of your rule: Notice of Public Hearing or Comment Period; Proposed Rule, and if needed, Emergency and Modified Rule.)

DATE: July 31, 2014

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: *(Agency Name, Address & Phone No.)* West Virginia Department of Revenue
State Capitol Bldg. 1 W-300
Charleston WV 25305

LEGISLATIVE RULE TITLE: Appointment of Special Assessors By the State Tax
Commissioner

1. Authorizing statute(s) citation W_Va Code §11-3-1 and 18-9A-11

2. a. Date filed in State Register with Notice of Hearing or Public Comment Period:
June 24, 2014

b. What other notice, including advertising, did you give of the hearing?

c. Date of Public Hearing(s) *or* Public Comment Period ended:
July 24, 2014

d. Attach list of persons who appeared at hearing, comments received, amendments, reasons for amendments.

Attached _____ No comments received X

- e. Date you filed in State Register the agency approved proposed Legislative Rule following public hearing: (be exact)

July 31, 2014

- f. Name, title, address and phone/fax/e-mail numbers of agency person(s) to receive all *written correspondence* regarding this rule: (Please type)

Mark S. Morton, General Counsel
State Tax Department Legal Division
1001 Lee Street East
Charleston WV 25301

phone: 304-558-5330
fax: 304 558 8728
e-mail: mark.s.morton@wv.gov

- g. **IF DIFFERENT FROM ITEM 'f'**, please give Name, title, address and phone number(s) of agency person(s) who wrote and/or has responsibility for the contents of this rule: (Please type)

David L. Stiles, staff attorney
State Tax Department Legal Division
1001 Lee Street East
Charleston WV 25301

(304) 558-8597

david.l.stiles@wv.gov

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

- a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

NA

b. Date of hearing or comment period:

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached

RESPONSES TO COMMENTS ON PROPOSED LEGISLATIVE RULE
TITLE 110, SERIES 1Q
APPOINTMENT OF SPECIAL ASSESSORS BY THE STATE TAX COMMISSIONER

Comment Period: June 24, 2014 – July 24, 2014

No comments were received during the comment period.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Appointment of Special Assessors by the State Tax Commissioner (110 CSR 1Q)

Type of Rule: X Legislative Interpretive Procedural

Agency: State Tax Department

Address: 1001 Lee Street

Charleston, WV 25301

Phone Number: (304) 558-5330

Email:

Fiscal Note Summary

Summarize in a clear and concise manner what impact this measure will have on costs and revenues of state government.

The rule, as written, provides for the appointment of special assessors at the county's expense when a county assessor is failing, neglecting, or refusing to assess all property at sixty percent of its true and actual value.

Fiscal Note Detail

Show over-all effect in Item 1 and 2 and, in Item 3, give an explanation of Breakdown by fiscal year, including long-range effect.

FISCAL YEAR			
Effect of Proposal	Current Increase/Decrease (use "-")	Next Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	\$0	\$10,000	\$10,000
Personal Services	\$0	\$0	\$0
Current Expenses	\$0	\$0	\$0
Repairs & Alterations	\$0	\$0	\$0
Assets	\$0	\$0	\$0
Other	\$0	\$10,000	\$10,000
2. Estimated Total Revenues	\$0	\$0	\$0

Rule Title: Appointment of Special Assessors by the State Tax Commissioner (110 CSR 1Q)

3. Explanation of above estimates (including long-range effect):

Please include any increase or decrease in fees in your estimated total revenues:

If the State Tax Commissioner is compelled to appoint a special assessor most of the costs related to the appointment will be billed to the county in which the appointment is made. However, the State Tax Department will incur some costs associated with securing a special assessor, training the appointee, and in monitoring the work of the appointee. The costs to the State Tax Department are not expected to be significant.

MEMORANDUM

Please identify any areas of vagueness, technical defects, reasons the proposed rule **would not** have a fiscal impact, and/or any special issues **not** captured elsewhere on this form.

The intent of this proposed rule is to provide for the appointment of special assessors at the county's expense when a county assessor is failing, neglecting, or refusing to assess all property at sixty percent of its true and actual value. Approval of the rule is not expected to result in significant additional costs.

Date: 7-30-14

Signature of Agency Head or Authorized Representative:



Robert S. Kiss, Cabinet Secretary
West Virginia Department of Revenue

**Title 110, Series 1Q
Legislative Rule
State Tax Division**

APPOINTMENT OF SPECIAL ASSESSORS

STATEMENT OF CIRCUMSTANCES REQUIRING LEGISLATIVE RULE

SB 1009, passed in the First Extraordinary Session of the Legislature, 2014, repealed W. Va. Code §11-1C-5b and §18-9A-2, and amended §11-3-1 and §18-9A-11.

Amended section 11-3-1(d)(4) of the Code requires the Tax Commissioner to promulgate a legislative rule setting forth the criteria for determining when a county's assessments are out of compliance, and establishing procedures for the appointment of special assessors.

IDENTIFICATION OF PROPOSED AMENDMENTS TO AN EXISTING RULE

Although the proposed legislative rule uses the same title and series numbers as a previous rule, the proposed rule is entirely new, and the subject matter is different. Therefore, strike-throughs and underlining have been omitted.

LEGAL CITATIONS OF RELEVANT STATUTES

W. Va. Code §11-3-1 and §18-9A-11

**Title 110, Series 1Q
Legislative Rule
State Tax Division**

APPOINTMENT OF SPECIAL ASSESSORS

Summary of Rule

The proposed rule sets forth a procedure for the appointment of special assessors by the State Tax Commissioner when the assessments in any county fall below sixty percent for two or more consecutive years.

The rule additionally sets forth the authority of the special assessors, and provides that all of their costs, including wages, salaries, and all necessary expenses, be borne by the county.

TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT

FILED

2014 JUL 31 A 11:43

SERIES 1Q
APPOINTMENT OF SPECIAL ASSESSORS BY THE STATE TAX COMMISSIONER
SECRETARY OF STATE

§110-1Q-1. General

- 1.1. Scope. - This legislative rule provides for the appointment of special assessors at the county's expense when a county assessor is failing, neglecting or refusing to assess all property at sixty-percent of its true and actual value, under authority of W. Va. Code §11-3-1 and 18-9A-11.
- 1.2. Authority. - WV Code §29A-3-1.
- 1.3. Filing Date. ~ __-__-2014.
- 1.4. Effective Date. ~ __-__-2014.

§110-1Q-2. Definitions.

Any terms used in this rule shall have the meanings ascribed to them in the West Virginia Code.

§110-1Q-3. Notice to Assessor of non-compliance.

- 3.1. For all tax years beginning on or after the assessment date of July 1, 2013, if at any time it be ascertained by the Tax Commissioner that an assessor is failing, neglecting, or refusing to list and assess all property in his or her county at sixty percent of its true and actual value, the Tax Commissioner shall notify the assessor of such failure in writing, and instruct the assessor to make all necessary corrections.
- 3.2. If the assessor has failed to make corrections for the following tax year, the Tax Commissioner shall appoint special assessors, in accordance with this rule, unless the assessor can show that substantial progress is being made to meet the criteria for compliance set forth in W. Va. Code §11-3-1(d).
- 3.3. If the Tax Commissioner has determined that the assessor has not complied, or has failed, neglected or refused to list and assess property at sixty percent of its true and actual value for three consecutive years, the Tax Commissioner shall appoint special assessors, as needed, for the purpose of making assessments and correcting the values of property in the county.

§110-1Q-4. Determining whether an assessor is in compliance

- 4.1. The following criteria will be used by the Tax Commissioner to determine whether an assessor is in compliance with the Constitutional requirement that all property be assessed at sixty percent of its true and actual value:

4.1.1. Sales validity – Recent sales of property that form the basis for determining current property values in the county are arm’s length sales, and accurately reflect current property values in that county.

4.1.2. Appraisal uniformity – A review will be made of valid sales from the most current sales ratio analysis. Sales will be selected by the monitor from residential neighborhoods only. This review will be made by comparing the equalization of the sale parcel as it relates to prior years’ values/listings and comparable properties located in the same neighborhood. The practice of “sales chasing” by an assessor is expressly disapproved.

4.1.3. Appraisal evaluation – The appraisal evaluation will be based on the ratio of the assessed value of real property to the sale price of that property for all arm’s-length sales of real property in a county during any assessment year, as reported to the Tax Commissioner by the assessor of that county, pursuant to his or her lawful duties. Any sales that are more than plus or minus two standard deviations from the median, or any sales of industrial real property or any sales which include the transfer of a mineral interest or interests, may be eliminated from the ratio study calculations by the State Tax Department. The median sales ratio will be rounded to the nearest whole percentage using standard rounding rules. The ratio of the assessed value of valid property sales to the sale price of such property should be within ten percent, plus or minus, of the constitutionally mandated sixty percent. The determination will be made in January of the tax year, when the property books are submitted for equalization and review. The Tax Commissioner will use the higher of either the median ratio or the aggregate ratio.

4.1.4. Such other criteria as the Tax Commissioner may prescribe – If the criteria in this section are not sufficient to determine whether an assessor is in compliance with Constitution Art. X, §§ 1 and 1b, the Tax Commissioner may use any other criteria that he or she deems relevant and reliable.

§110-1Q-5. Appointment of Special Assessors.

5.1. Special assessors shall have all of the power and authority vested by law in assessors, and the work of special assessors shall be accepted and treated for all purposes by the county boards of review and equalization and the levying bodies as the true and lawful assessment of all property valued by the special assessors for that tax year.

5.2. The county shall provide the special assessors with full access to and complete use of the offices and premises of the assessor, including the use of all equipment and vehicles.

5.3. Special assessors shall be paid salaries commensurate with their duties. In addition, they shall be reimbursed for all actual expenses incurred in the performance of their duties.

5.4. The expense of employing special assessors, including salaries and expenses, shall be borne by the county wherein they are employed, in accordance with the following provisions.

5.5. Certificate to clerk of county commission – The Tax Commissioner shall certify all expenses pertaining to the employment of special assessors to the clerk of the county commission for presentation to the county commission.

5.6. Audit of special assessors’ expenses by county commission – The county commission shall cause an audit to be performed of all special assessors’ expenses to ascertain their correctness. Upon

completion and approval of said audit, the county commission shall order all salaries and expenses of special assessors to be paid forthwith from county fund.

5.7. In the event that the county commission refuses to order the necessary disbursement of funds to pay the expenses, the Tax Commissioner shall apply to the circuit court for a writ of mandamus ordering the county commission to release the necessary funds.

5.8. In any county where the Tax Commissioner has appointed special assessors to perform duties otherwise performed by the assessor, the assessor of said county shall not be eligible to receive the additional compensation authorized in chapter seven, article seven of the West Virginia Code.