



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

1/28/2020 12:00:50 PM

Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Tax TITLE-SERIES: 110-43  
RULE TYPE: Interpretive Amendment to Existing Rule: No Repeal of existing rule: No  
RULE NAME: SPECIAL VALUATION METHOD FOR CERTAIN  
WIRELESS TECHNOLOGY PROPERTY

CITE STATUTORY AUTHORITY: W. Va. Code § 11-3-33

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 02/27/2020 11:00 AM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: MARK S. MORTON  
ADDRESS: P.O. BOX 1005  
CHARLESTON, WV25324  
EMAIL: taxlegal@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The rule provides that new wireless cellular transmission towers erected between July 1, 2019 and June 30, 2024 will be appraised at salvage value for ad valorem property tax purposes. "Salvage value" is defined as five percent of the original cost of the tower. The rule also provides that the property will be assessed by the Board of Public Works.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

The rule is intended to encourage the erection of new wireless transmission towers in the state, to improve communications service, including internet service, in the state.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This interpretive rule establishes the valuation method to be used by the Tax Commissioner and the Board of Public Works when determining the assessed value of wireless communications transmission towers for ad valorem property tax purposes that are constructed or erected between July 1, 2019 and July 1, 2024.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

Administrative costs for the Property Tax Division would be minimal.

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

UNKNOWN

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
<b>1. Estimated Total Cost</b>	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
<b>2. Estimated Total Revenues</b>	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

**BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.**

Yes

**Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

TITLE 110  
INTERPRETIVE RULE  
STATE TAX DEPARTMENT

SERIES 43  
SPECIAL VALUATION METHOD FOR CERTAIN WIRELESS TECHNOLOGY PROPERTY

§110-43-1. General.

1.1. Scope. – This interpretive rule establishes the valuation method to be used by the Tax Commissioner and the Board of Public Works when determining the assessed value of wireless communications transmission towers for ad valorem property tax purposes that are constructed or erected between July 1, 2019 and July 1, 2024. This rule interprets W. Va. Code § 11-6L-1 et seq. enacted in Senate Bill 3 (2019).

1.2. Authority. -- W. Va. Code § 11-3-33.

1.3. Filing Date. --

1.4. Effective Date. --

§110-43-2. Definitions.

2.1. “Tower” means a structure which hosts an antenna or other equipment used for the purpose of transmitting cellular or wireless signals for communications purposes, including telephonically, or for computing purposes, including any antenna and all associated equipment, which is constructed or erected between July 1, 2019 and July 1, 2024.

2.1.a. The term “tower” includes any building or structure typically significantly higher than its diameter, and high relative to surrounding terrain and buildings, that is used to provide, transmit or carry personal wireless services, cellular telephone service, data services, internet service, wireless signal capacity for communications purposes, wireless voice communications services or wireless digital signal service.

2.1.b. A tower may be freestanding or may be attached to a building or larger structure, and may be fully sheathed or walled in or of skeleton framework, including, but not limited to lattice construction, monopole construction, guyed construction or sheathed construction, or a similar structure, upon which there is mounted an antenna or other equipment used for the purposes of receiving or transmitting, or both receiving and transmitting, cellular or wireless signal capacity for communications purposes, including personal wireless services, cellular telephone service, data services, internet service, wireless signal capacity for communications purposes, wireless voice communications services or wireless digital signal service.

2.1.c. The term “tower” includes, but is not limited to, any antenna and all associated equipment.

2.2. The terms “communications tower” and “tower” do not include:

2.2.a. Towers used for transmission of commercial broadcast radio or television;

2.2.b. Any building or structure on which the communications tower or tower is mounted that has any use, utility or purpose other than to provide personal wireless services, cellular telephone service, data services, internet service, wireless signal capacity for communications purposes, wireless voice communications services or wireless digital signal service.

2.3. A tower shall not be denied the special valuation method authorized in W. Va. Code § 11-6L-3 and this rule because the tower is used for mounting or positioning communications antennae and telecommunications equipment of multiple users or multiple systems that provide personal wireless services, cellular telephone service, data services, internet service, wireless signal capacity for communications purposes, wireless voice communications services or wireless digital signal service.

2.4. "Salvage value" means five percent of the original cost of the tower.

2.5. The date that a tower is "constructed or erected" means the date that construction or erection is completed, and the tower is placed in operation.

2.6. "Original cost" means the basis of the property for federal income tax purposes for the year the tower is constructed or erected.

**§110-43-3. Valuation of certain wireless technology property.**

3.1. The Board of Public Works determines the assessed value of all towers constructed or erected between July 1, 2019 and July 1, 2024 regardless of whether the tower is owned by a public service business or is owned by a person or business that is not a public service business.

3.2. The appraised value of any tower, as defined in this rule, for ad valorem property tax purposes, shall be its salvage value, and the correlated value determined under a unit valuation approach shall be reduced by the difference between the original cost and the salvage value of a tower.

3.2.a. Example 1: A tower belonging to an entity which is not a public service business shall be appraised at its salvage value, that is, five per cent of its original cost.

3.2.b. Example 2: Towers belonging to public service businesses subject to unit valuation by the Board of Public Works shall be appraised by subtracting the difference between the original cost of the tower and its salvage value from the unit value of the utility.

3.3. The special valuation method set forth in this rule applies only to towers constructed or erected between July 1, 2019 and July 1, 2024.

3.4. The special valuation method first applies to a tower for the assessment year in which it is constructed or erected and continues for the four ensuing assessment years. In no case shall a tower be eligible for the special valuation method for more than five years.

3.4.a. Cell towers constructed or erected between July 1, 2019 but before January 1, 2020, will be assessed for 2021 taxes.

3.4.b. Cell towers constructed or erected in calendar year 2020 will be assessed for 2022 taxes.

3.4.c. Cell towers constructed or erected in calendar year 2021 will be assessed for 2023 taxes.

3.4.d. Cell towers constructed or erected in calendar year 2022 will be assessed for 2024 taxes.

3.4.e. Cell towers constructed or erected in calendar year 2023 will be assessed for 2025 taxes.

3.4.f. Cell towers constructed or erected in calendar year 2024 but prior to July 1, 2024 will be assessed for 2026 taxes employing the special valuation methodology.

3.4.g. Cell towers constructed or erected in calendar year 2024 after June 30, 2024 will not be assessed using the special valuation methodology, unless use of that methodology is extended by the Legislature.

3.5. This rule does not apply to any property that is exempt from ad valorem property taxation under any other provision of the West Virginia Code. For example, a tower owned by a municipality or other government entity is presumed to be used for a public purpose and is therefore exempt from ad valorem property taxation.

3.6. The presence or placement of a tower on property used primarily for agricultural purposes shall not deprive such property of its eligibility for farm use valuation, but the tower shall be assessed separately, along with the underlying surface property, which shall be appraised and assessed by the square footage that is not being used for farming purposes, and shall be Class III or Class IV, as the case may be. Income derived by the property owner from the presence of the tower shall not be considered income from the surface use of the property for the purpose of determining whether the property qualifies for farm use valuation.

**§110-43-4. Property tax returns.**

4.1. Owners of cell towers constructed or erected between July 1, 2019 and July 1, 2024 are required to return those cell towers to the Board of Public Works. Property tax returns are due May 1<sup>st</sup> each year for cell towers erected or constructed during the preceding calendar year, when the cell towers constructed or erected between July 1, 2019 and July 1, 2024.

4.2. The returns shall be prepared in the form prescribed by the Tax Commissioner and filed with the Property Tax Division of the State Tax Department on or before the applicable first day of May.

West Virginia State Tax Department  
Property Tax Division  
Special Properties Section  
P.O. Box 1463  
Charleston, WV 25325

**§110-43-5. Appeals.**

5.1. In September of the calendar tax year, the Tax Commissioner will notify the owner of cell towers constructed or erected between July 1, 2019 and July 1, 2024 of the tentative assessed values of the cell towers for the next calendar tax year.

5.2. If the owner disagrees with the tentative assessed value, the owner may submit information in support of its position to the Property Tax Division, at the address shown in §110-43-4.2 of this rule.

5.3. If the owner still disagrees with the assessed value, the owner may file a protest with the Board of Public Works and appear before the Board, on the date set by the Board to hear objections taxpayers have to the assessed values recommended by the Tax Commissioner.

5.4. The Board of Public Works will then set the assessed values of the cell towers. An owner claiming to be aggrieved by the assessed value may appeal to circuit court as provided in W. Va. Code § 11-6-12.

**§110-43-6. County assessors may not value cell towers valued by Board of Public Works.**

When a cell tower is valued by the Board of Public Works as provided in W. Va. Code § 11-6L-1 et seq. and this interpretive rule, the cell tower may not be valued by the county assessor of the county in which the cell tower is located.