



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Tax TITLE-SERIES: 110-01A

RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No

RULE NAME: VALUATION OF FARMLAND AND
STRUCTURES SITUATED THEREON FOR AD
VALOREM PROPERTY TAX PURPOSES

CITE STATUTORY AUTHORITY: W. Va. Code §11-1C-5(b)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 07/07/2021 9:00 AM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: MARK S. MORTON

ADDRESS: P.O. BOX 1005

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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 current rule addresses valuation of farmland and structures situated thereon for purposes of ad valorem property taxation. The proposed amendments to the existing rule clarify the proper treatment of conservation practices such as high tunnels.

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

The proposed amendments to the existing rule were mandated by passage of SB 160 during the 2021 regular legislative session. The proposed amendments state that conservation practices such as high tunnels shall not be considered as farm buildings or otherwise evaluated as structures. The term high tunnels is defined.

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

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This legislative rule establishes and provides guidance for valuation of farmland and structures situated thereon for ad valorem property tax purposes. This rule adds a new subdivision 2.5.16 for "high tunnels", also known by other names, but not limited to, polytunnels or hoopouses. The "high tunnels" are defined as unheated, plastic covered structures that provide an intermediate level of environmental protection and control compared to open field conditions and heated greenhouses. Per 110-1A-2.5.8 of this legislative rule, conservation practices, such as high tunnels, shall not be considered as farm buildings or otherwise evaluated as structures. There are minimal costs associated with the ad valorem property tax exemption for high tunnels.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

This legislative rule establishes and provides guidance for valuation of farmland and structures situated thereon for ad valorem property tax purposes. This rule adds a new subdivision 2.5.16 for "high tunnels", also known by other names, but not limited to, polytunnels or hoopouses. The "high tunnels" are defined as unheated, plastic covered structures that provide an intermediate level of environmental protection and control compared to open field conditions and heated greenhouses. Per 110-1A-2.5.8 of this legislative rule, conservation practices, such as high tunnels, shall not be considered as farm buildings or otherwise evaluated as structures. There are minimal costs associated with the ad valorem property tax exemption for high tunnels.

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

High tunnels are not considered part of farmland for valuation purposes and are therefore exempt from ad valorem taxes. There are minimal costs associated with the ad valorem property tax exemption for high tunnels.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	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
2. Estimated Total Revenues	0	0	0

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

High tunnels are not considered part of farmland for valuation purposes and are therefore exempt from ad valorem taxes. There are minimal costs associated with the ad valorem property tax exemption for high tunnels.

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
LEGISLATIVE REGULATIONS
DEPARTMENT OF TAX AND REVENUE

SERIES 1A
VALUATION OF FARMLAND AND STRUCTURES SITUATED
THEREON FOR AD VALOREM PROPERTY TAX PURPOSES

§110-1A-1. General.

1.1. Scope. -- These regulations clarify and implement state law relating to the appraisal of farmland and structures situated thereon. Because these regulations provide context modifications of relevant parts of 110 C.S.R 1 and such regulations with context changes were adopted by the Tax Commissioner, W. Va. Code §11-1C-10(e), W. Va. Code §11-1C-5(b) eliminates the requirement that this filing be subject to the proceeding requirements of W. Va. Code §29A-3-1 et seq.

1.2. Authority. -- W. Va. Code §11-1C-5(b).

1.3. Filing Date. --

1.4. Effective Date. --

1.5. Sunset Provision. -- This rule shall terminate and have no further force or effect on August 1, 2027.

§110-1A-2. Valuation Rule.

2.1. Scope. This rule prescribes how the appraised value of farmland and structures situated thereon will be determined for property tax purposes. This rule does not define what property is subject to assessment for ad valorem property taxes. Second, this rule does not prescribe how the appraised values determined under it will be adjusted on account of substitutions, accretions, improvements, additions, replacements, destructions, removals, casualties, acts of God, waste or any like occurrence. Third, this rule does not prescribe when appraised values determined under it will first be used.

2.2. Use of rule. This rule shall be followed by all persons valuing farmland and structures situated thereon in all counties in which such property is located or has a tax situs. This is necessary in order to meet the requirement in the West Virginia Constitution, article X, §1, that ad valorem property taxation be equal and uniform throughout the State. Consequently, once this rule is finally promulgated, it shall be binding upon the Tax Commission and his employees, county assessors and their employees, county commissions, sitting as boards of equalization and review and as administrative appraisal review boards, and the Board of Public Works. until amended or repealed by the Tax Commissioner in the manner prescribed by law, or abrogated by statutory amendment, or decision of the West Virginia Supreme Court of Appeals. See W. Va. Code §11-1a-24 (1983). The objective of these regulations is the appraisal of all real property used as farmland and structures situated thereon at its value for farm purposes.

2.3. Construction. This rule shall be applied, and interpreted in case of any ambiguity, in conformity with the West Virginia Constitution, and the several provisions of the W. Va. Code relating to the definition and determination of appraised value for purposes of ad valorem property taxation. In no event shall this rule be construed as requiring any property to be appraised in excess of its market value, or as subjecting to tax any property that is exempt from ad valorem property taxation under laws of the United States of this

State.

2.4. Annual Updating. This rule shall be reviewed annually and amended as necessary in accordance with the provisions and requirements of W. Va. Code §29A-3-1 et seq., in order to properly reflect any future changes in statutory or case law, to clarify application(s) of existing laws or legislative regulations and to amend policies and procedures of the State Tax Department adopted by procedural or interpretive regulations to implement such laws or regulations. Whenever this rule requires the Tax Commissioner to annually determine factors such as capitalization rates, acreage classification, etc., notice of his determinations shall be given to the public by filing notice thereof in the State Register; and by sending a copy of the notice to each assessor.

2.5. Definition. The following definitions of terms as used in these regulations shall apply, unless the context clearly requires a different meaning.

2.5.1. Agriculture. The term "agriculture" shall mean cultivation of the soil, including the planting and harvesting of crops and the breeding and management of livestock. See W. Va. Code §11-5-3. Unless the context requires a more limited meaning, the term "agriculture" includes "horticulture" and "grazing". In this context, the term "agriculture" shall mean the production of food, fiber, and ornamental woodland products, by means of cultivation, tillage of the soil and by the conduct of farm animal, livestock, dairy, apiary, equine or poultry husbandry, and the practice of horticulture, or any other plant or farm animal production and all farm practices related, usual or incidental thereto, including storage, packing, shipping and marketing, but not including any manufacturing, milling or processing of such products by persons other than the producer thereof. See W. Va. Code §19-19-2(a). Agriculture shall not include commercial forestry or the growing of timber for commercial purposes: Provided, that the growing of Christmas trees, orchards and nursery stock shall not be deemed to be commercial forestry or the growing of timber for commercial purposes. See W. Va. Code §11-1a-3(f) and (g), definitions "farm" and "farming purposes".

2.5.2. Agricultural. The term "agricultural" shall mean of or relating to agriculture.

2.5.3. Agricultural Land. The term "agricultural land" shall mean of or relating to agriculture.

2.5.3.a. Not less than five (5) acres of land and the improvements thereupon, used or useable in the production of agricultural or farm products having an annual value of one thousand dollars (\$1,000), or more, by the conduct of the business of agriculture, as defined in paragraph (1) of this section. See W. Va. Code §19-19-2(b), or

2.5.3.b. Less than five (5) acres of land, part, or all of which is used to produce agricultural or farm products for sale, if annual gross proceeds from such sales are five hundred dollars (\$500.00) or more.

(Note: Agricultural land is not automatically eligible for farm use appraisal. See Section 2.6.3. for qualifications.)

2.5.4. Capitalization Rate. The term "capitalization rate" shall mean a rate used to convert an estimate of income to an estimate of market value.

2.5.5. Depreciation. The term "depreciation" means the loss in value of an object, relative to its replacement cost, and is divided into three (3) types: physical deterioration; functional obsolescence; and economic obsolescence.

2.5.5.a. Economic Obsolescence. - A loss in value of a property arising from "outside forces" such as changes in use, legislation that restricts or impairs property rights, or changes in supply and demand

relationships.

2.5.5.b. Functional Obsolescence. The loss of value due to factors such as excess capacity, changes in technology, flow of material, seasonal use, part-time use or other like factors. The inability to perform adequately the functions for which an item was designed or the incapability to be adapted to alternative uses.

2.5.5.c. Physical Deterioration. A loss in value due to wear and tear.

2.5.5.d. Replacement Cost. The cost of constructing a building or improvement having the same utility, but using modern materials, design and workmanship.

2.5.6. Farm. The term "farm" shall mean a tract or contiguous tracts of land currently being used as part of a farming operation, primarily for farming purposes, whether by the owner thereof, or by a tenant, and which has been so used at least seasonally during the year immediately preceding the then current tax year (unless it qualifies for one of the exceptions in Section 2.6.3.b. of these regulations, but shall not include lands used primarily in commercial purposes: Provided, that the growing of Christmas trees or orchards and nursery stock shall not be deemed to be commercial forestry or the growing of timber for commercial purposes. See W. Va. Code §11-1a-3(f) and (g) defining "farm" and "farming purposes" and §11-4-3, defining "farm". For the purposes of this definition, "contiguous tracts" are farmlands which are in close proximity, but not necessarily adjacent: Provided, that all such contiguous tracts are operated as part of the same farm management plan.

2.5.7. Farm Animal. - The term "farm animal" shall mean and include any animal commonly found on a farm except that wildlife shall not be considered or deemed to be a farm animal unless intentionally and legally nurtured or raised and is intended for farm work, consumption as food or other commercial activity. This would include, but not be limited to, catfish, rabbits, buffalo, mink, foxes and otters.

2.5.8. Farm Building. The term "farm buildings" shall mean structures which directly contribute to the operation of the farm and shall include tenant houses and quarters furnished farm employees without rent as part of the terms of their employment: Provided, that conservation practices, such as high tunnels, shall not be considered as farm buildings or otherwise evaluated as structures for the purposes of applying this rule.

2.5.9. Farm Purposes. The term "farm purposes" shall mean the utilization of land to produce for sale, consumption or use, any agricultural products, including, but not limited to, livestock, poultry, fruit, vegetables, grains or hays or any of the products derived from any of the foregoing, tobacco, syrups, honey, and any and all horticultural and nursery stock, Christmas trees, all sizes of ornamental trees, sod, seed and any and all similar commodities or products including farm wood lots and the parts of a farm which are lands lying fallow or in timber or in wastelands. See W. Va. Code §11-1a-3(g).

2.5.10. Farm Rent. The term "farm rent" shall mean the consideration paid by a lessee to lease land used for farming purposes. Such consideration may be in cash or in kind, or a combination thereof.

2.5.11. Farm Use Application. The term "farm use application" means the application form designed by the Tax Commissioner which the landowner must complete and file with the county assessor on or before September 1st of each year in order to claim and obtain farm use valuation for the assessment year beginning July 1st of each year.

2.5.12. Application Form. The application form required to be filed with the assessor on or before

September 1st of each year shall require certification that the farm complies with criteria set forth in Section 2.6.3. of these regulations, and renewal application from year to year shall be sufficient upon statement certifying that no change has been made in the use of farm property which would disqualify "farm use" classification for assessment purposes .

2.5.13. Farm Use Valuation. The term "farm use valuation" shall mean a value estimated by capitalizing the fair and reasonable income which farm property might be expected to earn in the locality where situated, if rented.

2.5.14. Filing Date. The term "filing date" shall mean the date by which the annual application for farm use must be received by the assessor of the county wherein the property is situated. This application for farm use must be annually filed and received by the assessor on or before September 1st following the July 1st assessment date.

2.5.15. Grazing. The term "grazing" shall mean the use of land for pasturage. See W. Va. Code §11-5-3.

2.5.16. High Tunnels, also known by other names, including but not limited to, polytunnels or hoophouses, are unheated, plastic-covered structures that provide an intermediate level of environmental protection and control compared to open field conditions and heated greenhouses.

2.5.17. Horticulture. The term "horticulture" shall mean plant production of every character except forestry and plants not legally grown. See W. Va. Code §11-5-3.

2.5.18. Horticultural. The term "horticultural" shall mean of or relating to horticulture.

2.5.19. Management Rate. The term "management rate" shall mean a rate reflecting a return to an investor for the management of similar investment portfolios.

2.5.20. Natural Resource. The term "natural resource" shall mean and include the coal, oil, gas, ore, limestone, fireclay or other mineral or mineral substance(s) in and under the surface of the land, and the timber thereon.

2.5.21. Non-Liquidity Rate. The term "non-liquidity rate" shall mean a rate reflecting a return to an investor representing the loss of interest on an investment arising from the time required to sell the investment.

2.5.22. Normal Gross Rent. The term "normal gross rent" shall mean the rental amount which a property would attain in the open market at the time of appraisal, whether it is higher, lower or the same as the actual contract rent.

2.5.23. Nursery. The term "nursery" shall mean and include any ground or premises on or in which plants are grown for sale or distribution and transplanting. This may include any place where nursery stock is being treated, packed, or stored in preparation for sale, if such place is leased to or owned by the same person (including a firm or corporation) who owns the plants while they are growing in the same nursery.

2.5.24. Nursery Stock. The term "nursery stock" shall mean all trees, shrubs and woody vines, including ornamentals, bush fruits, grapevines, fruit trees and nut trees, whether cultivated, native or wild, and all buds, grafts, scions, fruit pits and cuttings from such plants. It also shall mean sod, including sod plugs and sod producing plants, and herbaceous plants, including strawberry plants, narcissus plants and narcissus bulbs. Florists' or greenhouse plants for inside culture or use shall not be considered nursery

stock, except that all woody plants, whether greenhouse or field grown, if for outside planting, are hereby defined as "nursery stock". See W. Va. Code §19-12-2(g). No plant shall be considered nursery stock unless it is situated in an actual "nursery," as defined in subsection 2.5.23. of this section.

2.5.25. Plant and Plant Products. The terms "plant" and "plant products" shall mean trees, shrubs, vines; forage, fiber, cereal plants, and all other plants; cuttings, grafts, scions, buds and all other parts of plants; and fruit, vegetables, roots, bulbs, seeds and all other parts of plants and plant products. See W. Va. Code §19-12-2(i).

2.5.26. Property Tax Component. The term "property tax component" shall mean a rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the life of the investment.

2.5.27. Risk Rate. The term "risk rate" shall mean a rate reflecting a return to an investor a necessary to attract capital to an investment containing a possible loss of principal or interest, or both.

2.5.27.a. Safe Rate. The term "safe rate" shall mean a rate reflecting a return to an investor on an investment which has little, if any, likelihood of loss of principal or anticipated return on investment.

2.5.27.b. Wood Lot. The term "wood lot" shall mean that portion of a farm in timber but shall not include land used primarily for the growing of timber for commercial purposes except that Christmas trees, or nursery stock and woodland products, such as nuts or fruits harvested for human consumption, shall be considered farm products and not timber products.

2.5.27.c. Woodland Products. The term "woodland product" shall mean cut trees, firewood, posts, rails, splints, logs, limbs and similar wood products and hickory nuts, walnuts, beechnuts, butternuts, and similar edible nuts or fruits of woody plants and maple sap used in making syrup and maple sugar.

2.6. Valuation Procedure.

2.6.1. General. This rule prescribes valuation methodologies to be employed in the appraisal of farm real estate (including the natural resource present) and the method of assessment of lands or minerals owned by domestic or foreign corporations where the surface land is used for farm purposes: Provided, That the true and actual value of all farms used, occupied and cultivated by their owners or bona fide tenants shall be arrived at according to the fair and reasonable value of the property for the purpose for which it is actually used regardless of what the value of the property would be if used for some other purpose; and that the true and actual value shall be arrived at by giving consideration to the fair and reasonable income which the same might be expected to earn under normal conditions in the locality wherein situated, if rented: Provided, however, That nothing herein shall alter the method of assessment of lands or minerals owned by domestic or foreign corporation.

2.6.2. Criteria. The following factors shall be indicative of but not conclusive in determining whether lands which appear to be actively devoted to farm or agricultural use are in fact bona fide farms:

2.6.2.a. Present and past use of the land, in particular, the use during the year immediately preceding the then current tax year.

2.6.2.b. Participation in governmental or private agricultural programs such as soil conservation, farmland preservation or federal farm lending agencies.

2.6.2.c. Extent of production for sale of plants, livestock and food for human and animal

consumption.

2.6.2.d. Size of the parcel or parcels farmed. In particular, whether such size is economically compatible with the agricultural use to which the land is purportedly devoted.

2.6.2.e. The amount of acreage in crops, pasture, and woodland.

2.6.2.f. The amount of livestock or poultry maintained thereon.

2.6.2.g. Whether or nor the farmer practices "custom farming" on the land in question.

2.6.2.h. The inventory of farm equipment and the condition thereof.

2.6.2.i. The number, type, utility, and condition of farm buildings.

2.6.2.j. The ratio of farm or agricultural use of the land to other uses of the land.

2.6.2.k. The occurrence of multiple sales for nonfarm uses of parcels out of a tract. The marketing of land as evidenced by such sales shall be strong, but not conclusive, evidence that the property is not a bona fide farm.

2.6.2.l. Woodland shall be considered land of a bona fide farm only if:

2.6.2.l.1. It is part of or appurtenant to a tract of land which is determined by the assessor to be actively devoted to farm or agricultural use; or

2.6.2.l.2. It is contiguous to or operated in common with a tract of land in the same ownership which has been determined by the assessor to be actively devoted to agricultural use, and such woodland is not used primarily in commercial forestry or the growing of timber for commercial purposes or any nonfarm use.

2.6.3. Qualification. - Qualifying farmland and the structures situated thereon shall be subject to farm use valuation, with primary consideration being given to the income which the property might be expected to earn, in the locality wherein situated, if rented. However, for land to qualify for farm use valuation, all the following criteria must be met:

2.6.3.a. The property must be classified as a "farm," as defined in Section 2.5 of these regulations.

2.6.3.b. The property must be agricultural land used for "farm purposes," as defined in Section 2.5 of these regulations, at least seasonally during the year immediately preceding the then current tax year, except that property which because of a change in management, natural disaster or other good reason was temporarily out of production, or temporarily operated at less than full production, and did not produce a sufficient crop in the immediately preceding year will nevertheless qualify if it otherwise meets the requirements: Provided, That no individual event shall be considered adequate to allow exemption under this paragraph for more than two (2) consecutive years. See W. Va. Code §§11-1a-3(f) and 11-1a-3(g).

2.6.3.c. The property must, in total, comprise not less than five (5) acres of land, except that property comprising less than five (5) acres, which otherwise qualifies, may nevertheless qualify if it meets the income test set forth in Section 2.6.3.d. below.

2.6.3.d. Unless excepted under Section 2.6.3.b., the land must be utilized to produce as follows:

2.6.3.d.1. General Rule. The farm must produce for sale, consumption or use agricultural products (as listed in the definition of Farm purposes in Section 2.5 of these regulations) having a fair market value to the producer of at least one thousand dollars (\$1,000), including any government subsidies or payments for farm products which may be given away: or

2.6.3.d.2. Small Farm Rule. If the farm has a total area of less than five (5) acres, then it must produce and sell at least five hundred dollars (\$500.00) worth of agricultural products (as listed in the definition of Farm Purposes in Section 2.5 of these regulations): or

2.6.3.d.3. Biennial Harvests. If the property would qualify for farm use appraisal, except that it produced little or no harvest in the preceding tax year because it is substantially being used to produce a farm produce which does not normally produce a harvest every year, this property shall be classified as farm property even during the years when there is no harvest and required to meet the one thousand dollars (\$1,000.00) minimum production value, or the small farm five hundred dollars (\$500.00) minimum production and sale, only during those years when there is an actual harvest: or

2.6.3.d.4. Pre-production Rule. If the property qualifies for farm use appraisal except for meeting the one thousand dollars (\$1,000.00) annual farm production test, then, if the failure is due to the farm product being in the growing or development stage (which by its very nature requires more than one (1) year to mature) the property is eligible for farm use appraisal: Provided, That

2.6.3.d.4.A. The crop must have been planted (in whole or in part) on or before the July first assessment day for which farm use value is sought; or

2.6.3.d.4.B. The livestock must have been acquired (in whole or in part) on or before the July first assessment day for which farm use value is sought. Additionally, a farm development plan must be attached to the application, outlining by year the plan for development of a productive farm. Within ten (10) years thereafter (including the first year for which farm use value is sought), the value of farm production must reach an annual wholesale value of one thousand dollars (\$1,000.00) or more. Otherwise, farm use value is lost for the next tax year.

2.6.3.e. The annual wholesale of such farm commodities or products must be fifty percent (50%) or more of the annual gross income derived from surface land use of the property.

2.6.3.f. The application for farm use value must be submitted as required in Section 2.8 of these regulations, and explain the basis for the applicant's estimate of value of farm commodities or products produced from the property for which farm use is sought.

2.6.3.g. Farm property producing income from natural resources, mineral income, or property from which the mineral estate has been severed, shall be treated in accordance with the provisions of Section 2.6.6.c. of these regulations.

2.6.4. Disqualifications. The following land is not eligible for farm land valuation

2.6.4.a. Land not used at least seasonally during the year immediately preceding the current year for farming purposes, unless it qualifies under Section 2.6.3.b of these regulations as land temporarily out of production or under Section 2.6.3.d.3. as land producing crops which do not produce an annual harvest or under Section 2.6.3.d.4. as land being developed to produce agricultural products.

2.6.4.b. Land consisting of a single tract of less than five (5) acres, (or contiguous tract of land, the combined acreage of which is less than five (5) acres) unless it qualifies as a small farm under Section 2.6.3.d.2.

2.6.4.c. Land used primarily in commercial forestry or the growing of timber for commercial purposes except that Christmas trees, ornamental plants and woodland products grown for human consumption are farm products grown not timber or forestry products.

2.6.4.c.1. Occasional casual sales of other wood or woodland products in relatively small quantities, or sales of wood or woodland products incidental to, and normal part of, the operation of a farm shall not constitute commercial forestry or the sale of timber for commercial purposes. Such sales may be counted toward the annual determination of the value of farm commodities on products under Section 2.6.3.d. of these regulations. If timber from a portion of a farm is sold for commercial timber, and the proceeds from the sale are greater than the value of agricultural crops produced by the land, the timber area (only) shall be appraised as commercial timberland until and unless it is used for some other purpose or is being converted to farm production uses.

Example. Sales by orchardists or Christmas tree growers of trees, logs, limbs, or similar wood products as a result of the clearing of old trees and planting of new trees in accordance with good farming practice, or as a result of periodic pruning or trimming or removal of damaged or deceased trees is incidental to, and a normal part of, the operation of orchards, and shall not constitute commercial forestry or the sale of timber for commercial purposes.

2.6.4.d. Land owned by a corporation that is not primarily engaged in the business of farming. In the event that the controlling stock interest in such corporation is owned by another corporation, that corporation owning the controlling interest must also be primarily engaged in the business of farming.

2.6.4.e. Property contained in a managed timberland application (110 C.S.R. 1H, §15).

2.6.5. Method. - Real property that is used primarily for farming purposes under these regulations shall be valued by giving primary consideration to the fair and reasonable income which the property might be expected to earn in the locality, where situated, if rented. To accomplish this valuation the following procedures shall be employed.

2.6.5.a. Rental information on a cash or share basis for pasture, tillable and wood lot land shall be collected and verified by the Tax Commissioner, or assessors in each county. Provided, That where rental information is not available or is deemed insufficient by the assessor in any given locale the rental information from similar neighboring locales, may be considered in order to determine the rent attributable to each classified acre of farmland. If that information is also deemed by the Commissioner to be insufficient, he may use the best rental information available to him.

2.6.5.b. Rental rates shall be established annually by the Assessors after a review of identifiable, willing seller-willing buyer arms-length farmland leases that have occurred in the State of West Virginia during the eight (8) years (W. Va. Code §11-1A-3) prior to the appraisal date and through review of any other appropriate information. The review shall give primary emphasis to the information and leases transacted during the most recent years.

2.6.6. Valuation.

2.6.6.a. Farmland. Farmland shall be classified based upon its actual farm use in the categories illustrated in Appendix 1. Rental amounts by class shall be assigned to each class of land on a per acre

basis. The per acre rental value shall be capitalized to yield an appraised value per acre. The appraisal value per acre thus determined shall be multiplied by the number of farm surface acres to yield the appraised value of farmland. This value shall be the farm use value as required by W. Va. Code §11-1A-10.

2.6.6.b. Farm Buildings. Rental value of farm buildings and other improvements on the farmland, shall be valued by determining the replacement cost of the building or structure by usual farm construction practices, and farm labor standards and subtracting therefrom depreciation. Both of these determinations shall be made in accordance with the Tax's Department's real property appraisal manual as filed in the State Register in accordance with Chapter 29A of the Code of West Virginia, 1931, as amended, and as it relates to agricultural buildings and structures. One (1) acre of land shall be assigned to all buildings as a unit situate on the property, regardless of the actual acreage occupied by such buildings and shall be appraised at its farm-use valuation based on the highest class of farmland present on the farm.

2.6.6.c. Timber & Other Natural Resources. - Minerals, timber and other natural resources on or under farmland subject to farm use valuation will (except for woodlots) be valued based upon the following circumstances, except that timber managed in accordance with Section 2.6.4.c.1. shall be subject to farm use appraisal only.

2.6.6.c.1. Fee estates which include natural resources, where income is not derived from such natural resource(s), shall be subject to farm use valuation only. Such natural resource(s) as may underlie or be present on such fee estates shall not be valued so long as income is not derived therefrom.

2.6.6.c.2. Fee estates which include natural resources, where income is derived from such natural resource(s), shall be valued as follows:

2.6.6.c.2.A. Fee estates where the annual wholesale value of farm commodities or products, as enumerated in Section 2.5 of these regulations is fifty percent (50%) or more of the usual annual gross income from all uses of the property, shall be subject to farm use valuation.

2.6.6.c.2.B. Fee estates where the annual wholesale value of farm commodities or products as enumerated in Section 2.5 of these regulations is less than fifty percent (50%) of the usual annual gross income from all uses of the property, shall be valued by adding to the surface farm use value, the applicable natural resource value as provided in the applicable rules for valuation of minerals and other natural resources.

2.6.6.c.2.C. For the purposes of these regulations, payments in kind of natural resources to any person from such fee estates shall be considered nonfarm income. For example: Payments of so called "free gas" to lessors to tenants of a natural gas producing tract are nonfarm income for the purposes of these regulations.

2.6.6.c.3. Estates in land arising from the severance of the surface and any mineral estate, shall be valued as follows:

2.6.6.c.3.A. Each separate estate in land, if owned by the person requesting farm use valuation, shall be valued as follows:

2.6.6.c.3.A.1. Where the annual wholesale value of farm commodities or products as enumerated in Section 2.5 of these regulations is fifty percent (50%) or more of the usual annual gross income from all separate estates, the property shall be subject to farm use valuation only.

2.6.6.c.3.A.2. Where the annual wholesale value of farm commodities or products,

as enumerated in Section 2.5 of these regulations is less than fifty percent (50%) of the usual annual gross income from all uses of the separate estates, the property shall be valued by adding to the surface farm use value, the applicable natural resource value as provided in the applicable rules for valuation of minerals and other natural resources.

2.6.6.c.3.B. Where the owner of any freehold estate in land is not the person requesting farm use valuation, those estates shall be valued as follows:

2.6.6.c.3.B.1. The estate which encompasses the surface land shall be subject to farm use valuation.

2.6.6.c.3.B.2. The estate(s) which do not encompass surface land shall be valued as provided in the applicable rules for valuation of minerals and other natural resources. Provided, however, that nothing herein shall alter the method of valuation of lands or minerals owned by domestic or foreign corporations. Property owned by a corporation or an unincorporated business is not considered a farm or land used for farming purposes unless the principal activity of the corporation or unincorporated business is the business of farming, and in the event that the controlling stock interest in a corporation is owned by another corporation, the corporation owning the controlling interest must also be in the business of farming. A corporation or unincorporated business shall be deemed to be primarily engaged in the business of farming if, the wholesale value of farm commodities or products as enumerated in Section 2.5 of these regulations is fifty percent (50%) or more of the annual gross income of the corporation or unincorporated business. An individual employed other than in farming is not an unincorporated business.

2.6.6.d. Life Estates and Estates and Interests Less Than Fee Simple. Life estates, dower interests, terms of years, remainders, remainder interests and similar estates and interests in property qualified for farm real estate valuation under these regulations shall be valued at present value based upon the farmland valuation of the property derived in accordance with these regulations.

2.7. Capitalization Rule.

2.7.1. Discussion. - A single statewide capitalization rate will be determined annually by the Tax Commissioner through the use of generally accepted methods for estimating such rates. The rate so developed will assume a level perpetual income series. The capitalization rate used to value farmland will be developed considered (1) a discount rate determined by the summation technique, (2) a recapture component, and (3) a property tax component.

2.7.2. Components. - Components of the capitalization rate are as follows:

2.7.2.a. Discount Component.

2.7.1.a.1. Summation Technique. The summation technique will be employed in developing a discount component in the valuation of farmland. Since land is a non-wasting asset and is expected to last indefinitely the rental income from land is assumed to be perpetual. The present value of future rentals for farmland will be estimated reflecting the following four (4) major subcomponents of a discounts of a discount rate:

2.7.1.a.1.A. Safe Rate. The "Safe Rate" will be developed through review of quarterly interest rates offered on thirteen (13) week United States Treasury Bills for a period of three (3) years prior to the appraisal date.

2.7.1.a.1.B. Risk Rate. The "Risk Rate" will be developed through review of data resulting from an annual survey of lending institution, such survey reflecting interest rates required on loans for acquisition and/or development of farmland. This survey will be conducted for a three (3) year period prior to the appraisal date. Results of the survey will be compared to quarterly interest rates offered on thirteen (13) week United States Treasury Bills for the same three (3) year period. An interest differential will then be selected representing the "Risk Rate."

2.7.1.a.1.C. Non-Liquidity Rate. The "Non-Liquidity Rate" will be developed through an annual survey to determine a reasonable estimate of time that farmland remains on the market before being sold. The selling time requirement thus determined will be used to identify United States Treasury Bills with similar time differentials in excess of thirteen (13) week Treasury Bills. The interest differential between these securities will be deemed to be representative of the "Non-Liquidity Rate."

2.7.1.a.1.D. Management Rate. The "Management Rate" will be developed through a survey of investment firms to identify charges for the management of investment portfolios.

2.7.2.b. Recapture Component. Land is a nonwasting asset and is expected to last indefinitely. Given this characteristic, inclusion of a recapture component in the capitalization rate is not appropriate.

2.7.2.c. Property Tax Component. This component will be derived by multiplying the assessment rate by the statewide average of tax rates on Class II property.

2.8. Farmland and Structures Situated Thereon Valuation Application; Appeal.

2.8.1. When to Apply. In order to qualify under the provisions of this rule for valuation purposes, the owner(s) of land must apply annually for farmland valuation after June 30th and on or before September 1st of each year. The application must be on forms prescribed by the State Tax Commissioner and filed with the assessor of the county wherein the land is situated. See Appendix 2 of these regulations for application timetable.

2.8.2. Response to Applicant. The assessor must notify each applicant, by first class mail, of his decision to grant or deny the application, no later than thirty (30) days following the receipt of the application. In those instances where the application is denied, the notice must include the basis for the denial, advise the applicant of the right to appeal and explain the appeal process.

2.8.3. Appeal Process. The applicant may, within thirty (30) days of notification of the denial of the application, appeal the assessor's decision to the State Tax Commissioner. The State Tax Commissioner shall rule on the petition not later than January 1st and shall notify the appellant and assessor thereof in due course. The Tax Commissioner may consider any appropriate information relevant to the determination. The decision, which shall be binding on the assessor and property owner, shall only apply to the eligibility of property for farm use valuation. The Tax Commissioner shall decide only the issue of whether the property constitutes a "farm" or "farms" within the meaning of W. Va. Code §11-1a-3(i) and these regulations. Question involving classification shall be resolved through W. Va. Code §11-3-24a. Questions involving appraised values shall be resolved through W. Va. Code §11-3-24.

APPENDIX 1

CATEGORIES OF FARMLAND

A. INTRODUCTION

(a) Appendix 1 divides farmland into three (3) categories according to utility or use of the land.

(b) Farmland is categorized as:

(1) Tillable. The term "tillable land" shall mean land used or usable and intended for use in raising crops.

(2) Pasture. The term "pasture land" shall mean used or usable and intended for use in grazing livestock.

(3) Woodland. The term "woodland" shall mean land used for growing timber.

(c) Each of these three (3) categories is divided into five (5) subcategories which grade the property according to quality and fitness for the particular utility or use category to which it has been relegated. These subcategories are designated "Grade A" through "Grade E." Land having less than the highest quality and fitness is classified as "Grade B" through "Grade E" "Grade E" being the lowest quality and fitness classification.

Any given tract of land may fall into any number of these categories and subcategories in accordance with the actual use to which the land is suited.

B. TILLABLE

Tillable land is categorized into five (5) grades.

Grade "A" This land is good loam soil that is easy to work (a tract approximately ten (10) acres or more in one (1) continuous parcel) and can be cultivated safely with ordinary good farm methods. This land is nearly level and there is little or no erosion.

Grade "B" This land is level to rolling and can be cultivated safely with ordinary good farm methods. The soil may need lime or fertilizing. The bottom land may need improved drainage.

Grade "C" This land is also level to rolling crop land. The drainage of the property is generally good. A small amount of erosion may be taking place. This land can be cultivated with care. It needs contour strip cropping usually best suited for hay and other grass crops. This type of property may be cut into smaller sections due to some sort of natural or man-made obstructions.

Grade "D" This land -is good hillside farmland; eighty percent (80%) of this land can be farmed with a tractor. The soil is generally of a good quality and the drainage is good. This type of land is generally best suited for the raising of hay.

Grade "E" This crop land is very steep hillside that is too steep to farm with modern farm machinery. The soil is generally of a poor quality and its cultivation may cause severe erosion.

C. PASTURE

Pasture land is categorized into five (5) grades.

Grade "A" This type of land could be used for either pasture or crop land. Its topography is level to rolling. The land can be clipped with a tractor; lime and fertilizer can be applied with modern farm equipment. The drainage of the property will be good and the soil will be good quality. The land is clear

of any significant overgrowth such as excess trees or brush.

Grade "B" This land is of similar nature to Grade "A" Pasture land other than the fact that the quality of the soil is not good. The size of the parcel will be of small nature. This type of land, for some reason, is not suitable for tilling and generally best suited for permanent pasture.

Grade "C" This land will generally have a moderate amount of erosion. The topography of the land will be average.

Grade "D" This land is generally hillside pasture that has a very steep degree of slope. The pasture will generally have some natural obstruction such as overbrush, etc. The type of soil is generally of poor quality.

Grade "E" This land is generally very steep and there may be a mixture of overbrush and pasture throughout. Brush must be cleared with hand tools. The soil consistency is generally of poor quality; lime or fertilizer is seldom applied to this type of land and then only with hand tools.

D. WOODLAND

Woodland is categorized into five (5) grades:

Grade "A" This land is adaptable, upon clearing, for use as tillable land or pasture. The topography of the land will be level to slightly rolling. The soil type is general of loam. There will be a stand of trees of commercial species.

Grade "B" This land is also level to rolling. It is adaptable for other profitable uses. There may be a minimal amount of erosion. The soil is generally of a good quality.

Grade "C" The topography of this land indicates that its best use is for the growing of timber. There is a stand of sound trees of commercial species in good form.

Grade "D" The topography of this land is such that the land is not economically feasible to use for anything other than growing trees. There may be some erosion of the soil.

Grade "E" The topography of this land is generally steep. It will be difficult land from which to harvest the timber. This land generally exhibits poor soil quality.

APPENDIX 2

TIMETABLE FOR FILING APPLICATION AND APPEALS

The following timetable shows the final dates for filing the farm use application, for filing appeals and for the issuance of administrative decisions at each step of the application and appeal procedure.

September 1st The taxpayer's farm use application must be filed after June 30th and on or before September 1st of the calendar year for determinations applicable to the next tax year. See Section 10.8.1 of these regulations.

October 1st The assessor must grant or deny the application and notify the applicant of such action within thirty (30) days of receipt of the application. See Section 10.8.2 of these regulations.

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October 31st The applicant may appeal the assessor's decision to the Tax Commissioner within thirty (30) days of notification thereof. See Section 10.8.3 of these regulations.

January 1st The Tax Commissioner must rule on the applicant's appeal on or before January 1st. See Section 10.8.3 of these regulations. An adverse decision of the Tax Commissioner may be appealed to the circuit court under W. Va. Code §11-3-25.

February 15th If the Tax Commissioner rules in favor of the applicant, finding that the property in controversy is a "farm" or "farms" within the meaning of W. Va. Code §11-1a-3(i) and these regulations, the taxpayer may then petition the county commission under the review and equalization provisions of W. Va. Code §11-3-24 for farmland valuation. The county commission must meet not later than February 1st for the purpose of equalization and review, and may not adjourn sine die before February 15th. See W. Va. Code §11-3-24.