

CHAPTER 6

PROPERTY TAX

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Published by **West Virginia Society of Certified Public Accountants**
900 Lee Street, E. Suite 1201, Charleston, WV 25301
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¶ 601 Introduction

Background: The property tax in West Virginia is imposed on all real and tangible personal property situated in the state on the first day of July of each year. Certain types of property are exempted from property taxation by the West Virginia Constitution. Other types are exempted by general statute.

With the exception of industrial, natural resource and public utility property, property is valued by the elected assessor of each county. The resulting taxes are collected by the county sheriff. The State Tax Commissioner has oversight authority of the appraisal process. All real and personal property are reappraised by the county assessors according to plans approved by the Property Valuation Training and Procedures Commission, which is chaired by the State Tax Commissioner. The State Tax Commissioner values all industrial and natural resource property and forwards his values to the county assessors. The State Tax Commissioner also provides tentative assessments for all public utility property to be used as a guide by the Board of Public Works in establishing final assessed values for property tax purposes.

The property tax is a local tax with the revenues divided among the county board of education, county government, and, if the property is located within the corporate limits of a municipality, the city government. Less than one percent (1%) of the property tax revenues are spent by state government.

Each property in the State must be reappraised at least every three years; as the revised values generated by the reappraisals are placed on the property books of the counties, all of the levy rates in each county must be adjusted to offset the effect of the increase in property assessments so that total property taxes in any year do not exceed 101% of the previous year's taxes. New construction is not included in that calculation.

¶ 602 Property Subject to Tax

Law: W. Va. Const. Art. X, § 1; W. Va. Code §§ 11-5-3, 11-1C-1b

The West Virginia Constitution provides that “. . . all property, both real and personal, shall be taxed in proportion to its value to be ascertained as directed by law.” Consequently, all real and tangible personal property that has acquired a tax situs for purposes of *ad valorem* taxation and not specifically exempted from taxation by provisions of the West Virginia Constitution or West Virginia Code is subject to the property tax. Intangible personal property is exempt by the provisions of W. Va. Code § 11-1C-1b.

In *Ohio Cellular RSA Ltd. Partnership v. Board of Public Works of State of W. Va.*, 198 W.Va. 416, 481 S.E.2d 722 (1996), the Supreme Court of Appeals held that in very limited circumstances, some types of property are not subject to taxation because they do not fit within the definitions of either real or personal property.

¶ 603 Exemptions--In General

Law: W. Va. Const. Art. X, §§ I, 1a, 1c; W. Va. Code §§ 11-3-9, 11-5-1 and 11-6B-3

A number of specific types of property are exempted from property taxation by the state Constitution and by statutes implementing those constitutional provisions. While some of the exemptions are absolute, most of the exemptions are conditioned on either the use to which the property is put or on the exclusive ownership of the property by the exempt entity. Property owned by the United States, for example, is absolutely exempt, except where Congress requires payments in lieu of taxes, while property belonging to the State of West Virginia is exempt only when it is exclusively owned by the state. Still less generous is the exemption afforded property owned by a municipality which must not only be exclusively owned by the municipality but must also be used for a public purpose. The following types of property are exempt from taxation:

Exemption for elderly and disabled: An exemption from *ad valorem* property taxes is allowed for the first \$20,000 of assessed value of a homestead that is used and occupied by the owner thereof exclusively for residential purposes, when such owner is sixty-five years of age or older or is certified as being permanently and totally disabled. The owner must have been a resident (domiciled in the state for more than six months of the calendar year) for more than two consecutive years preceding the taxable year. However, when a resident of West Virginia establishes residency out of state and subsequently returns and reestablishes residency in the state within a period of five years, such resident may file a claim for the exemption if he or she was a resident for any two years out of the ten immediately preceding years. Proof of residency may be either a voter's registration card or a motor vehicle registration. If an owner receives a homestead exemption in another state, the owner is ineligible for the exemption. (W. Va. Code § 11-6B-3).

"Low income" taxpayers that are eligible for the homestead exemption as described above may claim a credit against personal income taxes for the amount paid in property taxes on the first \$20,000 of taxable value for tax years 2007 and after (\$10,000 for tax years 2003-2006). A claim for refund must be filed within three years of the due date of the personal income tax return. "Low income" means a federal adjusted gross income for the taxable year that is less than or equal to 150% of the federal poverty guideline, based on the number of individuals living in the homestead. However, for tax year 2009 and subsequent tax years, any taxpayer subject to the federal alternative minimum tax may not claim a credit under this section. Beginning in 2012, the amount of this credit must be calculated before that provided by W. Va. Code § 11-21-23 (see below) (W. Va. Code § 11-21-21).

Also effective June 8, 2011, for tax years 2008 and later, any “low income” homeowner living in his her homestead is granted a refundable credit against personal income taxes for the amount of real property taxes paid in excess of four percent of gross household income. For tax year 2012 and thereafter, taxpayers must deduct the credit allowed by W. Va. Code § 11-21-21 from the tax paid before determining whether and by how much the taxes paid exceeds the four percent threshold. Before tax year 2012, a taxpayer can benefit under either this section or W. Va. Code § 11-21-21 but not both. However, for any tax year beginning in 2009, any taxpayer subject to the federal alternative minimum tax may not claim a credit under this section. The maximum credit is \$1,000. (W. Va. Code § 11-21-23).

Property used for charitable purposes: Property used for charitable purposes and not leased for profit, including property held by nonprofit corporations, is exempt. W. Va. Code § 11-3-9; *Appalachian Emergency Medical Services, Inc. v. State Tax Commissioner*, 218 W. Va. 550, 625 S.E. 2nd 312 (2005) (building owned by a charitable organization that is leased to another charitable organization maintains its exempt status if the lessee uses the building exclusively for charitable purposes and the lessor does not lease the building for profit); *Matkovich v. University Healthcare Foundation, Inc.* 238 W. Va. 345; 795 SE 2nd 67 (2016) (exemption not allowed for a charitable organization that leased property to a non-qualifying organization, despite rental fees being dedicated to the lessor’s charitable purposes). In an unpublished opinion in *Glob. Capital of World Peace, Inc. v. Wagoner*, No. 16-1061, 2017 WL 5192491 (W. Va. Nov. 9, 2017), the nonprofit corporation that owned property used for meditation courses and programs appealed from decisions of county tax assessor and State Tax Commissioner denying its application for ad valorem property tax exemption based on use of property for charitable purposes. The Supreme Court of Appeals held that nonprofit corporation’s property was not used exclusively for charitable purposes and, thus, was not exempt from ad valorem property taxes.

Farm equipment, produce and livestock: The personal property, including livestock, employed exclusively in agriculture (as defined in the section) and the products of agriculture while owned by the producers as defined in the section, may be exempted from taxation. (W. Va. Const. Art. X, § 1.) All property held for use in the subsistence of livestock at the commencement of the assessment year is exempt. Personal property, including vehicles that qualify for a farm use exemption certificate pursuant to W. Va. Code § 17a-3-2 and livestock employed exclusively in agriculture is exempt if such personal property is used on a farm or in farming operation that annually produces for sale agricultural products. (W. Va. Const. Art. X, § 1, W. Va. Code § 11-3-9.)

In *Pilgrim’s Pride Corp. v. Morris*, 228 W. Va. 596, 723 S.E.2d 642, 643 (2011), the Court held that a poultry manufacturer who contracts with independent farmers to provide the facilities and labor to raise its chickens to maturity is not entitled to rely upon the exemption from *ad valorem* taxation provided in W. Va. Code § 11-3-9(a)(28) for farms or farm operations because it does not qualify as a producer of agricultural

products under W. Va. Code § 11-5-3, and that a taxpayer who seeks relief from *ad valorem* taxation pursuant to the subsistence of livestock exemption under W., Va. Code § 11-3-9(a)(21) must be able to demonstrate that the personal property for which the exemption is sought and the subject livestock are both in the present physical possession of the taxpayer.

Public property. Public property is exempt and includes:

(1) Property belonging to the United States, other than property permitted by the United States to be taxed under state law. (W. Va. Code § 11-3-9(a)(1).)

(2) Property belonging exclusively to the state. (W. Va. Code § 11-3-9(a)(2).)

(3) Property belonging exclusively to any county, district, city, village or town in this state, and used for public purposes. (W. Va. Code § 11-3-9(a)(3).)

(4) Firefighting equipment, property used exclusively for the maintenance thereof and property for the meeting of fire companies. (W. Va. Code § 11-3-9(a)(20).)

(5) Property acquired by a county commission or a municipality to be leased, sold or otherwise disposed of according to the provisions of the Industrial Development and Commercial Development Bond Act, W. Va. Code § 13-2c-1 *et seq.*, is exempt from property taxation as public property so long as the property is owned by the county or municipality. When, however, the county or municipality leases an interest in that property to a private concern for a for-profit enterprise, the leasehold interest is taxable. (*In Re Maier*, 173 W.Va. 641, 319 S.E.2d 410 (1984)).

(6) Municipal waterworks and electric power systems, when acquired or improved pursuant to the provisions of W. Va. Code § 8-19-1 *et seq.*, are exempt from property taxation. (W. Va. Code § 8-19-4).

(7) Property used for area economic development purposes by nonprofit corporations when the property is not leased out for profit. (W. Va. Code § 11-3-9(a)(12).)

(8) Property located in this state, belonging to a city, town, village, county or other political subdivision of another state, and used for public purposes. (W. Va. Code § 11-3-9(a)(4).)

(9) Property which is used for the public purpose of distributing electricity, water or natural gas or providing sewer service when the property is owned by a duly chartered nonprofit corporation and the property is not held, leased out or used for profit. (W. Va. Code § 11-3-9(a)(13).)

(10) Property owned by the West Virginia Economic Development Authority. (W. Va. Code § 31-15-17.)

(11) Property owned by the West Virginia Land Stewardship Corporation as provided in W. Va. Code § 31-21-5(g) and 31-21-15. This includes property leased to third parties for commercial purposes when the third party lessee makes payments in lieu of property taxes.

(12) Property of hospital service corporations, medical service corporations, dental service corporations and health service corporations licensed under W. Va. Code § 33-24-1 *et. seq.* (W. Va. Code § 33-24-1.)

(13) Property of a health care corporation licensed under W. Va. Code § 33-25-1 *et seq.* (W. Va. Code § 33-25-1.)

Church property: Property used exclusively for divine worship, parsonages, and the household goods and furniture pertaining thereto is exempt. Mortgages, bonds and other evidence of indebtedness in the hands of bona fide owners and holders thereafter issued and sold by churches and religious societies for the purpose of securing money to be used in the erection of church buildings used exclusively for divine worship, or for the purpose of paying indebtedness thereon are also exempt. (W. Va. Code § 11-3-9(a)(3, 4, 5).)

Cemeteries: Cemeteries are exempted without regard to their use. Thus, undeveloped and unsold portions of a cemetery held in reserve for interment purposes until the additional space is needed for burial lots are exempt from taxation under the Constitution and state statutes. However, the reserve of land must be held in good faith and must be not disproportionate to the population of the community to be served. While a cemetery owned and operated by a private corporation is exempt from taxation, the exemption does not extend to furniture and equipment used for corporate purposes. (W. Va. Const. Art. X, § 1, W. Va. Code § 11-3-9, *In re Northview Services, Inc.*, 183 W.Va. 683, 398 S.E.2d 165 (1990).

Property used for educational purposes: Property belonging to, or held in trust for, universities, colleges, seminaries, academies and free schools, if used for educational, literary or scientific purposes, including books, apparatus, annuities and furniture is exempt. Any public or private nonprofit foundation or corporation which receives contributions exclusively for educational purposes of a college or university is also exempt, as are and public and family libraries. (W. Va. Code § 11-3-9(a)(8).)

Property used for health care: Property belonging to any public institution for the education for the deaf, mute or blind, or any hospital not leased for profit is exempt, as is a house of refuge, a lunatic or orphan asylum, or home for children or for the aged, friendless or infirm if not conducted for private profit. (W. Va. Code § 11-3-9(a)(17).)

In *United Hospital Center, Inc. v. Romano*, 233 W. Va. 313, 758 S.E.2d 240 (2014), the W. Va. Supreme Court of Appeals ruled that “a healthcare corporation, qualified as a charitable organization under federal law, whose construction of a

replacement hospital facility is substantially complete on the legal date of assessment and who has significant departmental staff on site working to fulfill the organization's charitable purposes, comes within the spirit, purpose, and intent of the constitutional framers for purposes of entitlement to exemption from *ad valorem* property taxation pursuant to West Virginia Code § 11-3-9(a)(12).

Household goods: Household goods and personal effects of the household are exempt unless used or held for profit. "Household goods" means only personal property and household goods commonly found within the house and items used to care for the house and its surrounding property "Personal effects" means only articles and items of personal property commonly worn on or about the human body, or carried by a person (W. Va. Const. Art. X, § 1a, W. Va. Code § 11-3-9(a)(22, 24, 25).) Dead victuals laid away for family use are exempt (W. Va. Code § 11-3-9(a)(26).

Cash and retirement funds: Money, bank deposits and pensions are exempt. (W. Va. Const. Art. X, § 1a, W. Va. Code § 11-3-9(a)(23).)

Property owned by benevolent associations: All property belonging to benevolent associations not conducted for private profit. (W. Va. Code § 11-3-9(a)(16).)

Intangible Personal Property: Intangible personal property, e.g., money, stocks, bonds and accounts receivable, etc., is no longer subject to *ad valorem* taxation. (W. Va. Code § 11-1C-1b.)

Tangible personal property in interstate commerce: Tangible personal property which is moving in interstate commerce through or over the territory of West Virginia, or which was consigned from a point of origin outside the state to a warehouse, public or private, within the state for storage in transit to a final destination outside the state, whether specified when transportation begins or afterwards, but in any case specified timely for exempt-status determination purposes. While in the warehouse, the personal property can be assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged for delivery out of state without losing the exemption, unless such activity results in a new or different product, article, substance or commodity, or one of different utility. This exemption is provided by W. Va. Const. Art. X, § 1c (known as the Freeport Amendment) as implemented by W. Va. Code §§ 11-5-13 and 11-5-13a. The latter section provides that "Goods which have been moved to a warehouse or storage facility, at which no substantial alteration takes place, to await shipment to a destination outside this state are exempt from *ad valorem* property tax."

While W, Va. Code 11-5-13a(a) provides that "It is the intent of the Legislature that the provisions of this section are to be liberally construed in favor of a person claiming exemption from tax pursuant to section one-c, article ten of the West Virginia constitution, this section and section thirteen of this article", the Tax Commissioner has historically been reluctant to grant this exemption. Thus, in *Feroleto Steel Company, Inc. v. Oughton*, 230 W. Va. 5, 736 S.E.2d 5 (2012), the Tax Commissioner took the

position that the act of cutting steel coils into narrower widths created a product of “different utility”, since the wide coils had a variety of uses, but the narrow coils that were cut to very precise measurements were suited to only one use by the single customer for whom they were destined. The Supreme Court of Appeals, however, ruled that the Tax Commissioner’s interpretation would render the statutory language “which says ‘[s]uch property shall not be deprived of such exemption because while in the warehouse the personal property is ... cut ... unless such activity results in a ... product ... of different utility’” meaningless, since “if the cutting of the steel coils in the instant case results in a product of new or different utility, under what circumstances would cutting property not so result?” The Court also emphasized that exemption of the inventory of steel coils from *ad valorem* property taxation is consistent with the intent in establishing the exemption that the applicable statute to be liberally construed in favor of a person claiming exemption from tax. The Court did note, however, that the composition of the steel was not changed during the cutting process. Nevertheless, this decision can be viewed at least as putting some teeth in the legislative directive that the Freeport Amendment be liberally interpreted as granting exemption from taxation.

The Supreme Court of Appeals held that inventory of parts used in the construction and overhaul of jet engines was not constitutionally exempt from *ad valorem* taxation under the Freeport Amendment as tangible personal property moving in interstate commerce. *Pratt & Whitney Engine Services v. Steager* 239 W.Va. 833. 806 S.E.2d 757 (2017)

The Tax Commissioner generally interprets these sections as providing an exemption for finished goods that are bound for out of state destinations, but as not exempting work in progress or raw materials. However, the amount of property tax paid on manufacturing inventory that is not exempt is now allowed as a credit against franchise taxes and corporate net income taxes (W. Va. Code § 11-13Y-1 *et seq.*). See ¶ 303, chapter 3 of this Guidebook.

Personal property of inventories of natural resources, however, is not exempt from property taxation unless required by federal law. (W. Va. Const. Art. X, § 1c.)

In the 2018 Regular Session, the West Virginia Legislature amended West Virginia Code §11-6-23 to allow portions of otherwise exempt property that are being used for nonexempt purposes to be separately assessed and taxed for property tax purposes.

¶ 604 Special Methods of Valuation

All taxable property must be assessed at sixty percent (60%) of its value, which is to be ascertained as directed by law. (W. Va. Const. Art. X, §§ 1 and 1b). In general, value means market value. However, special methods of valuation are provided for the following properties:

Managed timberland (W. Va. Code §§ 11-1C-11 and 11-1C-11a)

Owner occupied residential property (W. Va. Code § 11-3-1);

Farms used, occupied and cultivated by their owners or bona fide tenants (W. Va. Code § 11-3-1);

Pollution Abatement Equipment (W. Va. Code § 11- 6A-1);

Dealer Vehicle Inventory (W. Va. Code § 11-6C-1);

Specialized manufacturing production property (W. Va. Code § 11-6E-1);

Qualified Capital Additions to Manufacturing Facilities, which now include natural gas processing plants (W. Va. Code § 11-6F-1);

Oil and Gas Drilling Rigs (W. Va. Code § 11-1C-11c)

Interstate Public Service Corp. Motor Vehicle Business Registered Under Proportional Registration Agreement (W. Va. Code § 11-6G-1);

Automobiles (W. Va. Code § 17A-3-3a);

Motorboats (W. Va. Code § 20-7-12a);

Airplanes and helicopters owned or leased by commercial airlines or private carriers (W. Va. Code § 11-6H-1 *et seq.*); and

Certain specialized high-technology property (servers, defined as computers or devices on a network that manages network resources) directly used in a high-technology business or in an internet advertising business, and the value of tangible personal property directly used in a high-technology business or in an internet advertising business (W. Va. Code § 11-6J-1 *et seq.* The terms “high technology business” and “Internet advertising business” are defined in W. Va. Code § 11-15-9h.)

¶ 605 Exemptions--Strictly Construed

In all claims for property tax exemption, the constitutional and statutory provisions exempting property from taxation are strictly construed. It is incumbent upon the person who claims exemption from property tax to show that such property clearly falls within the terms of the exemption. Any doubt arising as to the exemption is resolved against the one claiming it. (*In Re Maier*, 173 W.Va. 641, 319 S.E.2d 410 (1984); *Pilgrim's Pride Corp. v. Morris*, 228 W. Va. 596, 723 S.E.2d 642, 643 (2011).)

¶ 606 Classification and Rates

Law: W. Va. Const. Art. X, §§ 1, 8, 10 and 11; W. Va. Code § 11-8-1 et seq.

The tax rates or levies applied to assessed values are capped under a classification scheme added to the West Virginia Constitution in 1932.

Class I property consists of certain agricultural personal property and may be subject to a regular levy rate no greater than one-half of one percent (0.5%) of assessed value.

Class II property is residential property and farms having a maximum regular levy rate no greater than one percent (1%) of assessed value.

Class III property includes all other property not included in Class I or II and which is located outside of a municipality and may be taxed at no more than one and one-half (1.5%) for the regular levy.

Class IV property includes all other property not included in Class I or II and which is located inside of a municipality and may be taxed at no more than two percent (2%) for the regular levy.

Levy rates: The levy rate applied to the assessed value of property is a composite of the levy rate set by each levying body in the county with jurisdiction to tax that property. Each levying body makes its levy estimate, or sets the proposed levy rate, annually between March 7 and March 28. (W. Va. Code § 11-8-9.) The levying bodies reconvene on the third Tuesday in April to finalize the levy rates. (W. Va. Code §§ 11-8-10a, 11-8-12a, and 11-8-14a.) If the annual appraisal, triennial reappraisal or general valuation of property produces an increase of 1% or more in the total projected property tax revenues, the regular levy rate must be reduced proportionately as between the county commission and the municipalities for all classes of property from the forthcoming year so the regular levy rate produces no more than 101% of the previous year's projected property tax revenues for counties and municipalities. (See, W. Va. Code § 11-8-6e). The levy rate for the support of the boards of education is set by the West Virginia legislature with a similar provision limiting aggregate taxes to 102% of the previous year's total. In both instances, total property tax revenues can be increased up to 110% following a public hearing. New construction is not included in calculating the increases. (See, W. Va. Code § 11-8-6f.)

Maximum Property Tax Regular Levy Rates

Rates are given in cents per \$100

Taxing Authority	Class I	Class II	Class III	Class IV
State	0.25	0.50	1.00	1.00
County	14.30	28.60	57.20	57.20*
Schools	22.95	45.90	91.80*	91.80
Municipal	<u>12.50</u>	<u>25.00</u>	<u>50.00</u>	<u>50.00</u>
	50.00	100.00	150.00	200.00

*Inadvertently listed as 7.20 for County, Class IV and 1.80 for Schools.
Class III in the Tax Commissioner's Fifty-Second Biennial Report

Excess levies: The levy rates can be increased by referendum to impose special or excess levies. If proposed by a municipality or a county, these special levies can increase the share of that levying body's maximum regular levy rate by up to 50% and remain in effect for up to five years. (W. Va. Const. Art. X, §§ 1, and 11.) If proposed by a board of education, the special levy can increase that levying body's maximum regular levy rate by up to 100% and can remain in effect for up to five years. (W. Va. Constitution Art. X, § 10.) If approved by referendum, an additional bond levy may be imposed to service the bonded indebtedness of local governments. (W. Va. Const. Art. X, §§ 8 and 10.) Excess levies and general obligation bond levies of counties and municipalities must be approved by at least 60% of those voting for and against the levy. (W. Va. Const. Art. X, §§ 1 and 8). Board of education excess levies and general obligation bond levies require a majority approval of those voting on the question. (W. Va. Const. Art. X, § 10). The excess levy rates are those specified in the excess levy ballot, unless the ballot allows them to be reduced in accordance with the excess levy ballot provision. (W. Va. Code § 11-8-6g(a).

Statewide, the average tax rates per \$100 of assessed valuation for the tax year ending December 31, 2016 (fiscal year ending June 30, 2017) are as shown in the following table.

Average Actual 2016 Property Tax Rates¹
Rates are given in dollars per \$100 of assessed valuation

	Average
Class I	\$ 0.00
Class II	1.18
Class III	2.18
Class IV	2.86

Statewide, the average rate for all property was \$1.91 per \$100 of assessed valuation.²

¶ 607 Assessment -In General

*Law: W. Va. Const. Art. X, §§ 1 and 1b; W. Va. Code §§ 11-3-1, 11-1C-1 et seq.,
and 11-3-24a*

Generally, property taxation in West Virginia is to be equal and uniform throughout the state, and all property, both real and personal, is to be taxed in proportion to its value to be ascertained as directed by law. (W. Va. Const. Art. X, § 1.) The term "values" as used in the Constitution means "worth in money" of pieces of property,

¹ Source: Fifty-Second Biennial Report, Tax Commissioner of West Virginia (2017).

² *Ibid.*

which is its market value. (*In re Tax Assessments Against Oneida Coal Co.*, 178 W.Va. 485, 360 S.E. 2d 560 (1987), rev'd on other grounds *sub nom.*, *Allegheny Pittsburgh Coal Co. v. County Commission of Webster Co.*, W.Va., 488 U.S. 336 (1989)). All property is to be assessed annually at its true and actual value. The true and actual value of property, both real and personal, is the price for which the property would be sold if voluntarily offered for sale by the owner thereof, upon such terms as such property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if such property were sold at a forced sale. (W. Va. Code § 11-3-1.) The foregoing law provides county assessors little practical guidance to use when determining the value of property that has not been sold recently.

The county assessors appraise all property, except industrial, natural resource and public utility property, at fair market value using the procedures and methodologies established by the Property Valuation Training and Procedures Commission and the valuation system established by the State Tax Commissioner. The assessors may use as an aid to valuation any information available on the character and values of such property.

Methods: The appraisals of the assessors and the Tax Commissioner are to be conducted pursuant to a reappraisal plan approved by the Property Valuation Training and Procedures Commission. See W. Va. Code § 11-1C-1 *et seq.* Appraisals of all property are on a three-year cycle. All assessors appraise the real and personal property which they are responsible for valuing at fair market value except for the special valuation provided for farmlands and managed timberland. Industrial and natural resource properties are appraised by the Tax Commissioner. The Tax Commissioner forwards each industrial and natural resource property appraisal to the county assessor of the county in which that property is located and the assessor will take 60% of each such appraisal as the assessed value in the land book or the personal property book. If the assessor does not accept the appraisal provided by the Tax Commissioner, the assessor must show just cause and a plan by which a different appraisal will be conducted to the Property Valuation Training and Procedures Commission. Public utility properties are appraised and assessed by the State Board of Public Works.

In *Collett v. Eastern Royalty, LLC*, 232 W. Va. 126, 751 S.E.2d 12 (2013), a county assessor hired a consultant to review the State Tax Commissioner's appraisals of several natural resource properties within the county. The assessor initially entered the State Tax Commissioner's appraised values on the land books, but then challenged those values in front of the County Commission sitting as a Board of Equalization and Review. In several hearings before the Board, both the consultant and an employee of the State Tax Department testified that the properties were undervalued. The Board accepted the Assessor's recommendation that the values be increased, and the taxpayers appealed to the circuit court, which reversed the Board and ruled that the Assessor had not complied with the statutory requirement that requires the Assessor, if she disagrees with the State Tax Commissioner's values, to show just cause and a plan by which a different appraisal will be conducted to the Property Valuation Training and Procedures Commission. The W. Va. Supreme Court of Appeals affirmed the circuit

court and held that “[p]ursuant to W. Va. Code § 11-1C-10(g) (2010), upon receiving the appraisal of natural resources property from the State Tax Commissioner, a county assessor may either accept or reject that appraisal. If the assessor rejects the appraisal, the assessor must show just cause for doing so to the Property Valuation Training and Procedures Commission, including a plan by which a different appraisal should be conducted. If the assessor accepts the appraisal, the assessor is then foreclosed from later challenging the appraisal before either the Property Valuation Training and Procedures Commission under W. Va. Code § 11-1C-10(g) or the Board of Equalization and Review under W. Va. Code § 11-3-24 (2010)”. To the extent that it ruled otherwise, the previous case of *In re 1994 Assessments of Property of Righini*, 197 W.Va. 166, 475 S.E.2d 166 (1999), was expressly overruled.

Assessment date: All property is assessed as of July 1 of each year. From July 1 until January 30, the assessor conducts a canvass of all property to ascertain the true and actual value of the property.

Classification: In addition to the duty to assess property, the assessor also makes the initial determination as to the proper classification of property and whether a particular property is exempt from or otherwise not subject to property taxation. (W. Va. Code § 11-3-24a.)

In *Pope Properties/Charleston Ltd. Liab. Co. v. Robinson*, 230 W. Va. 382, 738 S.E.2d 546 (2013), the Supreme Court of Appeals held that “Non-owner-occupied Class III condominium units, owned by a corporation and operated as income-producing property through the renting of the units as residential apartments, constitute commercial property with respect to the valuation and assessment of *ad valorem* taxes”.

Uniformity: The Constitution requires, generally, that taxation be equal and uniform throughout the state, except as otherwise permitted or required by the Constitution. All property must be taxed in proportion to its value.

In a decision involving Webster County's assessment of coal lands based on a recent purchase price, the United States Supreme Court held that the county assessor's intentional systematic underassessment of other comparable properties violated the taxpayers' rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. A recent arms-length purchase price may be used for assessment purposes, and a general adjustment may be utilized as a transitional substitute for an individual reappraisal of other properties which were not recently sold. However, a general adjustment, to satisfy equal protection requirements, must be such that the differences in proportion between assessments of a class of property are equalized over a short period of time. The Court also held that the injured taxpayers were not limited in remedy to seeking to have the assessments of undervalued properties raised to market value. The Equal Protection Clause requires the state to remedy constitutionally disparate assessments. (*Allegheny Pittsburgh Coal Co. v. County Commission of Webster Co.*, W. Va., 488 U.S. 336 (1989) *rev'g sub nom.*, *In re Tax Assessments Against Oneida Coal Co.*, 178 W.Va. 485, 360 S.E. 2d 560 (1987).

Assessment ratio: All property is assessed at sixty percent (60%) of its appraised value, which is determined as provided by law. (W. Va. Const. art. X § 1b).

¶ 608 Assessment--Residential, Farm Property And Managed Timberland

Law: W. Va. Code §§ 11-1C-5 and 11-3-1

For three types of real property, the term “true and actual value” has a modified statutory definition. The true and actual value of residential property is arrived at by giving primary, but not exclusive, consideration to the fair and reasonable amount of income which the same might be expected to earn, under normal conditions in the locality wherein situated, if rented. The true and actual value of all owner or tenant occupied farms is 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, with consideration given to the fair and reasonable income which the same might be expected to earn under normal conditions in the locality wherein situated. The value of managed timberland is arrived at so that all such property is valued in the same manner no matter where it is situated in the state; valuation is based on its use and productive potential as managed timberland. Timberland which does not qualify as managed timberland is valued at market value, except that farm woodlots are valued as part of the farm.

In *Wright v. Banks*, 232 W. Va. 602, 753 S.E.2d 100 (2013), the owners of residential property which they occupied as their primary residence purchased their property on June 23, 2010, for \$234,000. Six months later, on December 30, 2010, the assessor appraised the property and found its fair market value was \$355,200. The Wrights appealed the Assessor's valuation of their property to the Board of Equalization and Review. The Board ruled in favor of the Assessor. Thereafter, the circuit court affirmed the Board of Review's order and held that the taxpayers failed to offer any competent evidence that the Assessor's value was incorrect. The Supreme Court reversed, noting that the taxpayers had testified that the purchase price was an open market arm's length transaction. The Court cited several previous cases in which it had held that the purchase price paid for property in a recent arm's length transaction is a substantial factor in determining the property's true and actual value and that the assessor should consult all relevant sources of information as to the true and actual value of the property. Noting that the assessor failed to introduce any evidence that the purchase price was not an arm's length transaction, the Court reversed the circuit court's holding that the taxpayers did not offer competent evidence, and remanded the case for further consideration.

Justice Loughry, in his dissent, paid more attention to the assessor's testimony concerning how the computerized Integrated Assessment System (“IAS”), which is provided by the State Tax Commissioner to all assessors in the state, was used to determine the property's value by comparing it to the value of other properties in the same neighborhood; that is, by the market data approach. The assessor testified that ten properties in the same neighborhood were considered, but three were rejected

because they were foreclosure sales. The assessor also testified that the actual purchase price was more similar to the price of those in the foreclosure sales. Justice Loughry concluded that the taxpayers failed to meet their heavy burden of proof (see further discussion in ¶ 622 below).

Interestingly, neither the majority decision nor the dissent recognized that W. Va. Code § 11-3-1 (1977) requires that “the true and actual value of all property owned, used and occupied by the owner thereof exclusively for residential purposes shall be arrived at by giving primary, but not exclusive, consideration to the fair and reasonable amount of income which the same might be expected to earn, under normal conditions in the locality wherein situated, if rented”, and neither opinion recognized that the market data approach implemented in the IAS is based only on physical attributes of the property and in no way considers “the fair and reasonable amount of income which the same might be expected to earn, under normal conditions in the locality wherein situated, if rented”.

Also, it is interesting to note that the changes to chapter 11 article 3 enacted by the Legislature were not applicable to this case, since it concerned the value of the property for tax year 2011. The Court directed that “[o]n remand, the parties may introduce all relevant evidence regarding the true and actual value of the property”. *Wright v. Banks*, 232 W. Va. at 607, 753 S.E.2d at 105. This directive is contrary to the applicable version of W. Va. Code § 11-3-25, which provided that “[i]f there was an appearance by or on behalf of the owner before the county court, or if actual notice, certified by such court, was given to the owner, the appeal, when allowed by the court or judge, in vacation, shall be determined from the evidence so certified”.

¶ 609 Assessment--Real Property

Law: W. Va. Code §§ 11-3-7 and 11-4-9

Subject to exemptions, all tangible property, both real and personal, is taxed in proportion to its value which is ascertained as directed by law. A separate leasehold interest is taxable if it has a separate and independent value from the freehold, although under ordinary conditions the freehold estate will not be reduced in value by virtue of the leasehold nor will the leasehold have any ascertainable market value. (*Great A&P Tea Co. v. Davis*, 167 W. Va. 53, 278 S.E. 2d 352 (1981).) Separate interests in property, such as mineral interest, which have been severed from the fee are separately assessed and taxed. (W. Va. Code § 11-4-9.) A taxpayer’s challenge to whether a leasehold has separate, independent value presents an issue of valuation, not taxability and is properly presented to the board of equalization and review pursuant to W. Va. Code §11-3-24. *University Park at Evansdale, LLC V Musick*, 238 W. Va. 106, 792 SE 2nd 605 (2016).

In assessing the value of buildings and structures, the assessor determines the value of attached fixtures and machinery and includes it in the value of the building in which it is located unless the machinery and fixtures are owned by some person other

than the owner of the building. In that case, the machinery and fixtures will be assessed as personal property to their owner. (W. Va. Code § 11-3-7.)

Should the assessed value of a taxpayer's real property increase in any year by more than 10%, or \$1,000, whichever is the greater, the assessor must send the owner a "Notice of Increase in Assessment" not later than January 15th of the tax year, unless there is a general increase in the entire valuation of one or more districts, in which case the notice may be given by publication of a Class II legal advertisement. (W. Va. Code § 11-3-2a(a).)

In *Lee Trace, LLC v. Raynes*, 232 W. Va. 183, 751 S.E.2d 703 (2013), the Assessor issued a Notice of Increase in Assessment informing Lee Trace its property had increased in value. The Notice provided that "[i]f you believe an adjustment in the assessed value is necessary, you should contact the County Commission sitting as a Board of Review and Equalization." The Supreme Court found this notice to be insufficient under the older version of W. Va. Code § 11-3-2a, which then provided that the notice must "advise the person assessed or the person controlling the property of his right to appear and seek an adjustment in the assessment". The Court held that the notice was insufficient to "adequately inform the person assessed or the person controlling the property of his or her 'right to appear' and seek an adjustment in the assessment," because no mention was made of the taxpayer's right to appear by a specified time or at a specific place, and no explanation was provided regarding the role the county commission served in the tax assessment appeals process. The Court also noted that this statute was revised in 2010, and W. Va. Code § 11-3-24(f) now provides, in pertinent part, "[a]ny person who receives notice as provided in subsection (e) of this section may appear before the board *at the time and place specified in the notice* to object to the proposed increase in the valuation of the taxpayer's property ..." (emphasis in original).

In an unpublished memorandum decision, the West Virginia Supreme Court of Appeals in *Lee Trace, LLC V Larry Hess*, No. 14-0962; 2015 WL 762-8718 (hereafter Lee Trace II) revisited various issues relating to the assessment and valuation of the Lee Trace property. In its decision in Lee Trace I, the Supreme Court of Appeals remanded the matter to the Circuit Court of Berkeley County for further action. The matter was then transferred to the business court division, which remanded the matter to the Berkeley County Council as a board of equalization and review. Despite the fact that when the matter arrived at the Berkeley County board of equalization and review, it was sitting in a different tax year, the Supreme Court of Appeals upheld the procedure over the objection of the taxpayer. *Lee Trace, LLC V Berkeley County Council*, No. 16-0239, 2017 WL 1535075 (hereafter Lee Trace III) was another unpublished opinion which rejected the taxpayer's contention that the assessor failed to properly value the property for 2015 taxes and that the presumption in favor of the assessor's value and the standard of proof denied the taxpayer due process of law.

In the 2018 Regular Session, the West Virginia Legislature amended West Virginia Code §11-6-23 to allow portions of otherwise exempt property that are being used for nonexempt purposes to be separately assessed and taxed for property tax purposes.

¶ 610 Assessment--Personal Property

Law: W. Va. Code §§ 11-3-14, 11-3-14a and 11-5-1

Tangible personal property that has been located in this state for a period of time and has been used in the state and is located in the state on July 1 acquires tax situs in West Virginia and may be assessed, even though the property is removed before the tax is due or even before it has actually been assessed. (*George F. Hazelwood Co. v. Pitsenbarger*, 149 W.Va. 485, 141 S.E. 2d 314 (1965).)

All tangible personal property, unless exempt, belonging to persons residing in this state, whether such property be in or out of the state, unless the property actually in another state is subject to and actually taxed in the other state, and all personal property, unless exempt, in the state although owned by persons residing out of the state is subject to property taxation in West Virginia. (W. Va. Code § 11-5-1.)

¶ 611 Assessment-- Public Utility Property

Law: W. Va. Code § 11-6-1 et seq.; § 11-6G -2 et seq.

The State Tax Commissioner provides tentative assessments based on fair market value of operating property of public service corporations to be used as a guide by the Board of Public Works in establishing final assessed values for property tax purposes. In this regard, the Tax Commissioner uses the "unit rule" where applicable and furnishes tentative valuation estimates for the Board's consideration. The "unit rule" is an appraisal of an integrated property as a whole system without any reference to the values of its component parts.

Public service businesses include airlines, bus lines, railroads, railroad car lines, express and freight companies, pipeline companies, electric power companies generating, transmitting or distributing electricity, including hydroelectric companies, telegraph and telephone companies; gas companies, water companies, and any other business that is a public service business. This chapter uses the terms public service business and public utility interchangeably.

Operating property is a utility's property used for purposes immediately connected with providing the respective utility service. The Tax Commissioner's understanding of this definition is consistent with that used by regulatory bodies in constructing the utility rate base for rate making purposes. Accordingly, the Tax Commissioner gives primary consideration to whether properties are included in an utility operating property classification as reflected in the applicable uniform system of accounts when deciding issues as to whether property is operating or non-operating property. For example, to determine what constitutes operating property for an electric utility, the Tax Commissioner will look to the Federal Energy Regulatory Commission's Uniform

System Accounts Prescribed for Electrical Utilities. For state regulated utilities, the Tax Commissioner will look to the appropriate system of accounts of the West Virginia Public Service Commission.

Non-operating property of public service corporations is assessed by the assessor of the county in which the non-operating property of public service corporations is located.

¶ 612 Valuation--Public Utility Property

Law: WV Code § 11-6-1, WVCSR § 110-1M-1 *et seq.*

Methodologies: While the rule provides for the use of the cost, income and market value methods of valuation, for-profit public service corporations are primarily valued using the income approach.

Tax returns: Public utility property tax returns must be filed no later than May 1 of each year, although on good cause shown, the State Tax Commissioner may grant an extension of the filing deadline. Based upon these returns of public utilities to the Board of Public Works and other relevant information, the Tax Commissioner makes tentative assessments and provides them to the Board of Public Works on or before September 15 of each year. By October 1, the Board assesses and fixes the true and actual value of all public utility property. By law, the assessed value of public utility property is sixty percent (60%) of its appraised value. An appeal from the decision of the Board may be taken to the circuit court of the county in which the property assessed is located.

The State Auditor apportions the assessed values to the counties where the utility property is situated according to the method the auditor deems appropriate and then applies the appropriate levy rate set by the local levying bodies to determine the tax due from public utilities.

Valuation of interstate commercial motor vehicles: Interstate motor carrier operating property includes each power unit used as an interstate commercial motor vehicle registered under a proportional registration agreement. The cost approach is used to determine the appraised value of an interstate commercial motor vehicle. The gross capital cost of the interstate commercial motor vehicle is multiplied by percentage factor representing the remainder of the vehicle's value after depreciation.

The Tax Commissioner annually provides the depreciation schedules used to the West Virginia Commissioner of Motor Vehicles for use in assessing power units subject to proportional registration agreements. The property assessment and tax collection upon interstate power units occurs at the time of registration under the International Registration Plan (IRP). IRP is a method of registering fleets of vehicles that travel in two or more member jurisdictions. All states (except Alaska and Hawaii), Washington D.C., and all Canadian provinces (except Northwestern Territories, Nunavut and Yukon) are members of the plan. Registration through IRP is required for vehicles that are used for transporting persons or property, travel in two or more IRP jurisdictions (including West Virginia), and:

- (1) Have a registered gross vehicle weight or actual weight in excess of 26,000 pounds (property carrying vehicle); **or**
- (2) Are power units with three (3) or more axles regardless of weight, including buses; **or**
- (3) Are used in combination and the actual weight of the combination exceeds 26,000 pounds.

For each interstate truck, road tractor and power unit registered under a proportional registration agreement, the appraised value is multiplied by an apportionment factor, the numerator of which represents a total fleet miles driven in the most recent taxable year in West Virginia and the denominator of which represents the total fleet miles driven in the most recent tax year everywhere. The mileage amounts are those reported to the West Virginia Division of Motor Vehicles. This scheme results in certain interstate trucks, road tractors and power units that have no presence in the state to be subject to West Virginia personal property taxation. The constitutionality of this system was upheld by the Circuit Court of Kanawha County, West Virginia. *Vacuum Truck Rentals LLC V Bonham, Circuit Court of Kanawha County*, Civil Action Number 16-AA-112; January 8, 2018.

¶ 613 Valuation--Coal

Law: W. Va. Code § 11-1C-10; WVCSR § 110-11-1 et seq.

The Tax Commissioner is required to make and maintain accurate values for all natural resource properties including coal. The methodology for valuing coal properties is set forth in rules that were approved for promulgation by the West Virginia Legislature. Under the rules, coal property ownership is classified into the following four categories for valuation purposes:

(1) *Active*: Active mining property refers to a mind of coal property or portion of a property involved in a mining operation. Each and every bed of coal being mined in a permitted mining operation is a separate active mining property.

The value of active mining property is the sum of the value of active acres and reserves that are included in the active mining property. In no case may the value per active acre on a coal bed be less than the applicable present value per acre on the coal bed. Unmineable, mined-out and barren acres are not included in active mining property.

The valuation formula applicable to an active mining property is based on the actual market to which the coal from the bed is currently being sold, whether it is metallurgical and/or steam. Factors used for the valuation formula include the coal thickness, 1800 tons per acre foot, the clean coal recovery rate, the coal royalty rate,

whether the coal is underground or surface, the coal market, a net present value multiplier, and the mine life in years. The factors are different for steam coal and metallurgical coal.

(2) *Reserves*: Reserve coal property means any property for which coal rights are part of the owned estate and which is not part of an active mining property. Reserve coal is valued according to a reserve coal valuation model. The minimum valuation placed on reserves may never be less since five dollars (\$5.00) per acre. Any unmineable, mined- out or barren coal is valued as part of the reserve coal property.

The base market location value is the starting point of evaluating a reserve coal. The base market location value for location is determined by multiplying the coal price per million BTU for location by the royalty rate for the location. The current market location value is then tabulated for each coalbed by multiplying the base market location value by a BTU and sulfur adjustment factor for each coalbed at location. The present value of 1 BTU of each coalbed at a location is then calculated by multiplying the current market location value by one millionth and then multiplying the resulting product by a standard midyear present worth factor calculation.

(3) *Unmineable*: Unmineable coal is coal which is not in a mineable coal bed. It is valued under one of the following circumstances:

Properties in which each and every coal bed is unmineable or where each bed is partially unmineable and the remaining portion is mined out, are valued at a rate of five dollars (\$5.00) per deed acre, and

Properties in which an acre or more of unmineable coal coexists with mineable coal in any bed, are valued at a rate of five dollars (\$5.00) times the amount of unmineable acreage in the bed containing the least amount of unmineable acreage.

(4) *Mined out coal properties*: A mined out coal bed is a bed of coal, or any portion of the bed, which has been depleted by prior mining operations and from which no additional coal is recoverable by generally accepted mining practices and suitable equipment, unless there is evidence to the contrary. Mined out coal property is valued under one of the following circumstances:

Properties in which each and every coalbed is completely mined out, are valued at the rate of one dollar (\$1.00) per deed acre;

Properties in which an acre or more of mined out coal coexist with mineable coal in the bed are valued at a rate of one dollar (\$1.00) times the amount of mined out acreage in a bed containing the least amount of mined out acreage.

(5) *Barren*: Barren coal properties means fee/mineral/coal properties where the coal rights are owned but the coal was never deposited and/or has been subsequently

removed by erosion. Barren coal properties are valued under one of the following circumstances:

Properties in which each and every coalbed is completely barren are valued at the rate of one dollar (\$1.00) per deed acre; and

Properties in which an acre or more of barren coal coexists with mineable in any bed, are valued at a rate of one dollar (\$1.00) times the amount of barren acreage in the bed containing the least amount of barren acreage.

Leasehold interests: Generally, the values attributed to coal property are attributed to the owner of the coal property. Where the property is subject to a lease requiring the owner to permit the mining of the coal at a royalty rate substantially below current market value, the owner may petition the Tax Commissioner to attribute a portion of the value of the coal to the leaseholder.

Where coal rights are part of a fee estate in which the surface has qualified as an active farm, the coal will not be valued if no royalties are derived from the coal. Only where the annual wholesale value of farm commodities or products is less than 50% of the usual gross income from all uses of the property will the applicable coal values be added to the surface farm use values.

Property reports: On or before May 1 of each year, the producer is required to file an Annual Appraisal Report for Production of Coal with the Tax Commissioner with acknowledgement to the coal owners and the county assessors of the counties in which the mine is located. On or before August 16th of each year, the coal owner of any property that is part of a permitted mining operation under lease is required to file an Annual Appraisal Return for Reserve Mineral Properties with the Tax Commissioner. Owners of other coal properties may file an Annual Appraisal Return for Reserve Mineral Properties, on or before September 16th, with the Tax Commissioner; otherwise the properties are valued using the best available information. (WVCSR § 110-11-4.9). Beginning with tax year 2012, the due date of the return from owners of coal property changed from August 1 to May 1 preceding the July 1 assessment date, and an informal review process was made available to taxpayers.

¶ 614 Valuation--Producing and Reserve Oil and Natural Gas Properties

Law: W. Va. Code § 11-1C-10; WVCSR § 110-1J-1 *et seq.*

The State Tax Commissioner is required to make and maintain accurate values for all natural resource properties, including oil and natural gas. The methodology for valuing these properties is set forth in rules that were approved for promulgation by the West Virginia Legislature.

Oil or natural gas is one of several estates in real property which may be owned either separately or in conjunction with other estates. If oil or natural gas is owned as a separate estate, either absolute, as a leasehold, or in conjunction with other estates,

West Virginia property tax law requires that ownership be listed, valued and taxed in proportion to its value to be ascertained as directed by law. If oil or natural gas is owned in conjunction with other estates, the value of the oil or natural gas is included in the value of the other estate. Oil or natural gas may be owned without being produced. Oil or natural gas title may exist where no well or natural gas is known to be present, or where the oil or natural gas is unproducible or depleted. WVCSR § 110-1J-2.

Oil and natural gas properties are divided into several categories:

(1) *Natural gas-producing property*: Natural gas-producing property is property from which natural gas has been produced or extracted at any time during the calendar year preceding the July 1 assessment date. Natural gas producing property includes the interest or interests underlying an area of up to one hundred and twenty five (125) acres of surface per well for property with active wells on the parcel. All acreage of the natural gas producing property in excess of one hundred twenty five (125) acres per well, is valued at the non-producing rate per acre.

(2) *Oil-producing property*: Oil-producing property is property from which oil has been produced or extracted at any time during the calendar year preceding the July 1 assessment date. Oil-producing property includes the interest or interests underlying an area of up to 40 acres of surface per well with one (1) or more active wells on the parcel. All acreage of an oil-producing property in excess of 40 acres per well is valued at the non-producing rate per acre.

Valuation: The value of oil and/or natural gas producing property is determined through the process of applying a yield capitalization model to the net receipts (gross receipts less royalties paid less operating expenses) for the working interest in a yield capitalization model applied to the gross royalty payments for their royalty interest. Where ownership is split through a lease or royalty arrangement, different values are determined for the working interest and the royalty interest. If the well produced for less than 12 months during the first calendar year of production, or during the first calendar year of production after being shut-in during the previous calendar year, the gross receipts and royalties are annualized prior to the process of applying a yield capitalization rate. WVCSR § 110-1J-4.1. Various appeals are currently pending in the West Virginia Business Court Division that challenge the amount of operating expenses currently used by the Tax Department in calculating net receipts for valuation purposes.

(3) *Non-producing, shut-in wells*: A non-performing or shut-in well is a well which due to the producer' s decisions, market reasons and/or product performance, was non-productive during the entire most recent calendar year preceding the July 1 assessment date. WVCSR § 110-1J-3.12.

Valuation: The value per acre of non-producing acreage, which includes shut-in wells, equals the discounted annual lease payment per acre. A valuation schedule for non-producing properties is determined annually by the Tax Commissioner for each district within the county, where data is available. The Tax Commissioner annually

conducts a review of oil and/or natural gas lease agreements transacted at arm's length in all 55 counties to determine the average annual delay rental lease payment per acre, and lease term. The per-acre value for non-producing property is the sum of the projected annual income stream from delay rental during the lease term discounted in each year by a capitalization rate. The valuation of one dollar (\$1.00) per acre is used where property is located in those areas of the state where drilling activity/production have not been established and the property is presumed to be barren. WVCSR § 110-1J-4.7.

(4) *Barren oil/gas property*: Barren oil and natural gas properties are those fee and mineral parcels in West Virginia where data suggest that the presence of oil and natural gas is very unlikely WVCSR § 110-1J-3.2.

Valuation: Barren oil and natural gas areas (fee accounts) are valued at one dollar (\$1.00) per deed acre. WVCSR § 110-1J-4.9.

(5) *Plugged or abandoned acreage*: Plugged or abandoned acreage is valued to the oil or gas owner at the nominal rate of one dollar (\$1.00) per acre. This category includes any plugged or abandoned acreage up to one hundred and twenty five (125) acres per natural gas well and up to forty (40) acres per oil well.

(6) *Valuation of wells producing both oil and natural gas*: The valuation of wells that produce both oil and natural gas is determined according to the methods described in the Tax Commissioner's legislative rule. These values are then summed to result in the overall value of the oil and/or natural gas producing acreage.

(7) *Valuation of industrial use wells*: Wells used for industrial purposes only are valued based on the actual most recent calendar year preceding the July 1 appraisal date MCF usage times the average West Virginia spot price for that calendar year determined by the "Natural Gas Monthly," published by the US Department of Energy, Energy Information Administration. WVCSR § 110-1J-4.6.4

(8) *Valuation of storage well areas*: Storage well areas have a value equal to the discounted annual lease payment per acre that is applied to the reserve oil and gas acreage within the county. The minimum value applied to the acres will not be less than five dollars (\$5.00) per deed acre. The value does not include inventories of natural gas stored within. These natural gas storage inventories are assessed separately to the inventory owner. WVCSR § 110-1J-4.11.

(9) *Farm properties*: The oil and gas rights that are part of the "fee" estate where the use of the surface qualified for farm use appraisal are valued in accordance with the Tax Commissioner's rule on the valuation of farmland and structures situated thereon for *ad valorem* property tax purposes, WVCSR § 110-1A. See, WVCSR § 110-1J-4.13.

(10) *Valuation of the producer's personal property at non-producing or shut-in wells*: The valuation of the producer's personal property that is part of a non-producing

or shut-in well's appraisal will be assigned to the producer at the same value applied to home use only wells. WVCSR § 110-1J-4.16.

(11) *Valuation of pre-production/permit leaseholds*: Chattel real accounts (personal property) for pre-production/permit leaseholds are valued by the county assessor. WVCSR § 110-1J-4.17.

(12) *Valuation of producing flat-rate royalty accounts*: The appraised value of a producing flat-rate royalty is determined using a level terminal income series rather than the declining terminal income series. WVCSR § 110-1J-4.18.

(13) *Valuation of coal bed methane wells*: The Tax Commissioner currently applies the same methodology to the valuation of coal bed methane wells as he does to natural gas wells. The propriety of that approach is in litigation.

Property reports: On or before August 1 of each year, the producer must file the West Virginia Oil and Gas Producer/Operator Return with the State Tax Commissioner, with acknowledgment to the county assessors in counties where the oil and natural gas properties are located. (CRS § 110-1J-4.14.)

¶ 615 Valuation--Timberland

Law: W. Va. Code §§ 11-1C-10, 11-1C-11, 11-1C-11a, and 11-1 C-11b, 11-3-5a; WVCSR § 110-1H-1 *et seq.*

The State Tax Commissioner is required to make and maintain accurate values for all natural resource properties, including managed timberland. The methodology for valuing these properties is set forth in rules that were approved for promulgation by the West Virginia Legislature.

Any person who owns timberland comprising ten (10) or more contiguous acres may qualify for certification as managed timberland for property tax purposes. W. Va. Code § 11-1C-11a.

In order to qualify for dedication as managed timberland for property tax purposes, the owner must annually certify in writing to the division of forestry, that the property meets the definition of managed timberland and contracts to manage the property according to a plan that will maintain the property as managed timberland. In addition, each owner certification must state that forest management practices will be conducted in accordance with approved practices from the publication of "Best Management Practices for Forestry." W. Va. Code § 11-1C-10 (b)(1).

Timberland certified by the division of forestry as managed timberland is valued as managed timberland and it is managed under a cooperative contract with the division of forestry if the certification has not been surrendered by the owner of the property or revoked by the director of the division of forestry.

Property certified as managed timberland which prior to certification was properly classified as class II (residential property) may not be reclassified as class III or class IV for property taxation merely because the property has been certified as managed timberland unless there is some other event or change in use of the property that disqualifies it from being treated as class II property.

The appraised value of managed timberland is determined on the basis of the potential of the land to produce future income according to its use and productive potential. Potential for future net income is discounted to its present value utilizing a discounted cash flow; this is the appraised value. The ability of a stand of timber to produce wood products for sale or use depends primarily on the quality of the soil and certain topographical and climate features which can be expressed as a site index. Site index is the principal criterion influencing the appraised value of managed timberland. These factors are reviewed annually by the Tax Commissioner for necessary updating of the method described in order to properly reflect future changes in the values of managed timberland. WVCSR § 110-1H-2.1.

¶ 616 Valuation--Other Active Natural Resources

Law: W. Va. Code § 11-1C-10; WVCSR § 110-1K-1 et seq.

The State Tax Commissioner is also required to make and maintain accurate values for all other natural resource properties. The methodology for valuing these properties is set forth in rules that were approved for promulgation by the West Virginia Legislature.

Natural resources, such as limestone, fireclay, dolomite, sandstone, shale, sand and gravel, and salt are some of the several estates in real property. Other natural resources which are not currently being actively mined such as lead and zinc, manganese, iron ore, radioactive materials and oil shale, are valued according to the Tax Commissioner's rule when such interests are separate from the fee interest or are being leased and/or actively mined.

These natural resources are divided into five categories:

(1) *Active*: "Active mining property" means a mineable natural resource on a parcel or portion of a parcel involved in the mining operation, as defined by the Tax Commissioner's rule and permitted by the West Virginia Office of Miner's Health, Safety and Training/Office of Mining and Reclamation. Each and every mineable natural resources is considered a separate active mining property

Valuation: The value of active mining property is the value per active acre multiplied by the amount of active acres. In no case may the active mining property be valued at less than its value as reserve property. The valuation per active acre is arrived at by application of a valuation formula for active mining property based on the actual quantity of resource produced and sold. Factors used in the formula are: resource thickness in feet; tons per acre foot; clean resource recovery rates; royalty rate; net present value multiplier; and mine life in years. WVCSR § 110-1K-4.1.4.

The maximum active mining portion for each natural resource is fifteen (15) years multiplied by the annual acres mined, except for salt. The active mining portion around each salt production well is a maximum of thirty-five (35) acres. After a well's first year production, active mining property is derived by subtracting acres mined from the thirty-five (35) acres. If the available mineable acreage is less than fifteen (15) years or thirty-five (35) acres, respectively, the total available acreage will be considered for designation as "Active Mining Property" WVCSR § 110-1K.-4.1.2 g, h.

(2) *Reserves*: Reserves means the natural resource acres or portion of those acres, which: contain the mineable natural resources; are within a permitted mining property; and, are not within the active mining portion of the property.

Valuation: Reserve valuation rates for limestone, sandstone, clay and shale, sand and gravel, and salt are determined annually by the Tax Commissioner after review of recorded willing seller-willing buyer natural resource, production-specific, property sales that have occurred in the state of West Virginia during at least five calendar years prior to the July 1 appraisal date, through inspection of other appropriate information, and from quantitative data that might reflect current market values.

(3) *Unmineable*: An unmineable natural resources is a natural resource which is so situated that it may not be mined using generally accepted mining practices and suitable equipment.

Valuation: An unmineable natural resource subject to this rule is valued at one dollar (\$1.00) per acre.

(4) *Mined-out*: Mined out means a natural resource, or any portion thereof, determined to be depleted by prior mining operations.

Valuation. Mined out properties are valued at one dollar (\$1.00) per acre

(5) *Barren*: Barren means fee or mineral properties where other natural resource rights are owned, a specific natural resource may never have been deposited or may have been subsequently removed by erosion.

Valuation: A barren natural resource subject to this rule is valued at one dollar (\$1.00) per acre.

Resources part of active farm property: The natural resource rights that are part of the "fee" estate where the use of the surface has qualified for farm use appraisal is valued in accordance with the Tax Commissioner's rule on valuation of farmland and structures situate there on for ad valorem property tax purposes. WVCSR § 110-1K-4.8

Property reports: On or before May 1 of each year, the producer must file an Annual Appraisal Report for Production of Other Mined Minerals with the Tax Commissioner

with acknowledgment to the natural resource owners and the county assessors in the counties where the mines are located. On or before September 16 of each year, the natural resource owner of a property that is part of a permitted mining operation must file an Annual Appraisal Return for Reserve Mineral Properties with the Tax Commissioner. Owners of natural resource properties may file an Annual Appraisal Return for Reserve Mineral Properties, on or before September 16, with the Tax Commissioner; otherwise the properties are valued using the best available information. (WVCSR §110-1K-4.9.) For assessment years beginning on or after July 1, 2011, the due date of this return changed from September 1 to May 1 preceding the July 1 assessment date, and an informal review process was made available to taxpayers.

¶ 617 Valuation--Commercial and industrial Real Property

Law: W. Va. Code §§ 11-1C-7 and 11-1C-10; WVCSR § 110-1P-1 *et seq.*

The county assessor determines the appraised value of commercial real property in accordance with rules approved by the West Virginia Legislature for promulgation by the State Tax Commissioner and pursuant to a plan approved by the Property Valuation Training and Procedures Commission. The Tax Commissioner determines the appraised value of industrial property and provides that value to the county assessor. W. Va. Code § 11-1C-10. The Tax Commissioner's rules (WVCSR 110-1P-1 *et seq.*) provide rules for valuing both commercial and industrial real property.

Valuation generally. The appraised value (market value) of commercial and industrial real property is the price for which the property would sell if it was sold to a willing buyer by a willing seller and in an arms-length transaction without either the buyer or the seller being under any compulsion to buy or sell. In determining appraised value, primary consideration is given to the trends of price paid for like or similar property in the area or locality wherein such property is situated. Additionally, for purposes of appraisal of any tract or parcel of real property used for commercial or industrial purposes, including chattels real, the appraisal must consider the following factors:

- (1) Location of such property;
- (2) Its site characteristics;
- (3) The ease of alienation thereof, considering the state of its title, the number of owners thereof, and the extent to which the same may be the subject of either dominant or servient easements;
- (4) The quantity of size of the property and the impact which its sale may have upon surrounding property;
- (5) If purchased within the previous eight years, the purchase price thereof and the date of each such purchase;

- (6) Recent sale of, or other transactions involving, comparable property;
- (7) The value of such property to its owner;
- (8) The condition of such property;
- (9) The income, if any, which the property actually produces and has produced within the next proceeding three (3) years; and

(10) Any commonly accepted method of ascertaining the market value of any such property, including techniques and methods peculiar to any particular species of property if such technique or method is used uniformly and applied to all property of like species.

Improvements to the land and improvements on the land are considered in the appraisal process. WVCSR § 110-1P-3.1.2

Improvements to the land are land improvements, the value of which is included in the value of land. Some examples of these improvements include privately owned drainage systems, driveways, walks, etc.

Improvements on the land or buildings and structures are valued separate and apart from the land.

In addition to improvements, other important considerations affecting the value of land, excluding farmland, are:

- (1) Location,
- (2) Size,
- (3) Shade,
- (4) Topography,
- (5) Accessibility,
- (6) Present use,
- (7) Highest and best use,
- (8) Easements,
- (9) Zoning,

(10) Availability of utility

(11) Income imputed to land, and

(12) Supply and demand for land of a particular type.

Each of these factors should be considered in the appraisal of the specific parcel. Some, however, may be given more weight than others. WVCSR § 110-1P-3.1.3.

Commercial real property and personal property is valued by the assessor of the county in which the commercial property is located as provided in W. Va. Code § 11-1C-5, while industrial real and personal property is valued by the Tax Commissioner as provided in W. Va. Code § 11-1C-10. Industrial property means real and personal property integrated as a functioning unit intended for the assembly, processing and manufacturing of finished or partially finished products. W. Va. Code § 11-1C-10(a)(1).

In determining an estimate of the fair market value of industrial and commercial real properties, the Tax Commissioner and the county assessor will consider and use where applicable, three generally accepted approaches to value: cost, income, and market data.

For purposes of valuing active and residual industrial and commercial land in West Virginia, valuing sites are separated into four broad categories: heavy industrial sites, light industrial or commercial sites, industrial parks, and mine sites. These sites are further classified when appropriate into active and residual portions. These classifications are considered when applying and establishing the valuation method to the industrial and/or commercial properties.

“Active industrial or commercial land” means that portion of land used for industrial and commercial purposes.

“Commercial property” means income producing real property used primarily but not exclusively for the sale of goods or services, including but not limited to offices, warehouses, retail stores, apartment buildings, restaurants and hotels.

“Economic obsolescence” means a loss in value of property arising from “outside forces” such as changes in use, legislation that restricts or impairs property rights, or changes in supply and demand relationships.

“Economic rent” means the rental amount which a space or property would attain in the open market at the time of appraisal, whether it is lower, higher or the same as the actual contract rent.

“Freehold estate” means in the estate in land or other real property, of uncertain duration; that is, either of inheritance or which may possibly last for the life of a tenet at the least. For the estate to be freehold it must possess two characteristics: immobility and indeterminate duration.

¶ 618 Valuation--Commercial and Industrial Personal Property

Law: W. Va. Code §§ 11-1C-7 and 11-1C-10; W. Va. CSR § 110-1P-1 *et seq.*

This rule provides methodologies for appraising commercial and industrial furniture, fixtures, machinery, equipment, inventory, material and supplies. The appraisal of commercial furniture, fixtures, machinery, equipment, inventory, material and supplies is performed by the local assessor. The appraisal of industrial furniture, fixtures, machinery, equipment, inventory, material and supplies is performed by the State Tax Commissioner.

Situs: The situs of commercial and industrial furniture, fixtures, machinery and equipment, inventory, material and supplies depends upon an analysis of the residence of the owner, and the location of the personal property and whether the personal property is subject to property taxation by another state and is taxed by the state. All commercial and industrial personal property belonging to persons or corporations residing in West Virginia, whether such property is in or out of the state, is taxable as personal property in West Virginia, unless the property is actually and permanently located in another state and is actually taxed as personal property in the other state. All commercial and industrial personal property located within this state, though owned by persons or corporations residing in another state, is taxable as personal property in West Virginia.

Methodologies: The cost, income and market approaches to valuation may be employed. Once generated, the various estimates of value are considered in arriving at a final value estimate. However, of the three approaches to value, the cost approach is most consistently applied to machinery, equipment, furniture, fixtures, and leasehold improvements because of the availability of data. The market approach is used less frequently, principally due to a lack of meaningful sales. The income approach is not normally used because of the difficulty in estimating future net benefits to be derived except in the case of certain kinds of leased equipment.

Depreciation: Physical deterioration, economic obsolescence and functional obsolescence are to be considered in valuing commercial and industrial personal property. However, historically, the Tax Commissioner has only considered economic obsolescence when requested to do so by the property owner.

In *Century Aluminum of West Virginia, Inc. v. Jackson County Com'n*, 229 W.Va. 215, 728 S.E.2d 99 (May 29, 2012), the Supreme Court of Appeals examined and approved the Tax Commissioner's treatment of functional and economic obsolescence for industrial personal property. In this case, the Court approved the Tax Commissioner's arbitrary rule that the allowance for obsolescence for machinery and equipment that is no longer in service can't exceed 50% of its in-service value. The Tax Commissioner's justification for this rule is that the value of the equipment by the income approach would be \$0 (since it's not in service), so averaging that with the value by the cost approach would yield only a 50% reduction in value.

This reasoning ignores the fact that the objective of valuing property by the income approach is the same as that by the cost approach: the determination of the true and actual or fair market value of the property. If one uses two different rulers to measure the length of the same object and comes up with two wildly different lengths, it's likely that there's something wrong with one of the rulers. If one uses the income approach and the cost approach and gets two very different values, one or both of those approaches is coming up with the wrong answer. Here, it's obvious which one is wrong - the value cost approach before deduction of economic obsolescence is simply NOT representative of the value of the equipment. One must deduct economic obsolescence in order to correctly determine the value by the cost approach, and only after that is done would it be meaningful to compare or average the result by the cost approach with the value by the income approach.

So too, in *Lee Trace, LLC v. Raynes*, 232 W. Va. 183, 751 S.E.2d 703 (2013), the Assessor used the cost approach, and the taxpayer appeared before the board of equalization and review and sought to adjust the 2011 assessment by using the income approach, thus reducing the tax assessed value of the property. The assessor confirmed at that hearing before the board that some other apartment complexes in the area had assessments reduced by the board upon consideration of income when taxpayers specifically requested it, but that the income approach was not used to assess Lee Trace's property.³ The board asked the assessor to provide it with a value that took into account the income of the property, and the taxpayer provided income information to the assessor the next day. The assessor used the income approach and came up with a value of about \$5.2 million for the property, significantly below its value by the cost approach of about \$7.6 million. The board then notified the taxpayer that it changed the value to \$6.4 million, which it represented as being the "average" of the results of the two approaches. Lee Trace appealed this result to the circuit court⁴, which held that the Assessor was within her discretion to use the cost approach, but the board was also within its discretion to ask her to request the Assessor to compute a value by the income approach and to revise the final value up or down. It basically approved the Board's value, making only a minor mathematical revision to correctly compute the average value.

The Supreme Court of Appeals reversed, reasoning that, since the Assessor didn't have any comparable sales from which to develop a capitalization rate, she should not have used the income approach, since W. Va. C.S.R. § 110-1P-2.2.2 states in pertinent part, that "[w]hen possible, the most accurate form of appraisal should be used, but because of the difficulty in obtaining necessary data from the taxpayer, or due to the

³ The Assessor also claimed that the income approach was not used to assess Lee Trace's property because the data was not available to develop a "cap rate" used in the calculation due to the lack of any comparable sales in Berkeley County for the period in question – but that seems inconsistent with the fact that other taxpayers had their values reduced upon consideration of their income.

⁴ The circuit court permitted supplemental discovery. Again, this is contrary to the applicable version of W. Va. Code § 11-3-25, which provided that "[i]f there was an appearance by or on behalf of the owner before the county court, or if actual notice, certified by such court, was given to the owner, the appeal, when allowed by the court or judge, in vacation, shall be determined from the evidence so certified".

lack of comparable commercial and/or industrial properties, choice between the alternative appraisal methods may be limited”⁵. It therefore further took issue with the circuit court’s finding that it was not an abuse of discretion for the board to utilize the “hybrid income approach” developed by the Assessor, and found that the board’s value was therefore plainly wrong. Finally, it found that Lee Trace had introduced no evidence that the Assessor’s cost approach value was wrong, and it ordered the circuit court to reinstate that value.

Ultimately, *Century Aluminum* and *Lee Trace* are two more in a depressingly long line of cases in which the Supreme Court rubber stamps the taxing authority’s actions, based at least in part on an imperfect grasp of generally accepted appraisal practices. As Justice Ketchum noted in his dissenting opinion in *Lee Trace*, neither the board nor the circuit court agreed with the Assessor’s value by the cost approach. Also, the Court ignored the Assessor’s contention that she had used the income approach for other, similar properties. Yet the Supreme Court overruled both the board and the circuit court. From a technical appraisal standpoint, it seem likely that if the cost approach yields a value of \$7.6 million and the income approach yields a value of \$5.2 million, there is probably something wrong with either or both. However, at least the board’s decision to average the two recognizes that there should be some agreement between the results.

Revisions to The State Tax Commissioner’s Legislative Rule: The State Tax Commissioner filed a revised version of his legislative rule for valuing commercial and industrial property on April 13, 2013. The proposed revision became effective July 1, 2013. Other than a general renumbering and a change in the name of the “market data approach” to the “market approach”, the most significant change is the addition of sections dealing with the three forms of depreciation.

§ 3.5.1 states that the Marshall Valuation Service shall be used for physical depreciation tables, which reflects current practice.

§ 3.5.2 states that economic obsolescence can be measured best by either a market approach method or an income method, and states that the income approach is normally used due to a lack of sales data for comparable commercial or industrial properties. This does not seem to indicate a significant change in the approach currently used by the Tax Department.

§ 3.5.3 discusses functional obsolescence, and recognizes that some functional obsolescence is accounted for in the Marshall Valuation Service. This section divides functional obsolescence into two types: curable and incurable. Curable functional obsolescence is to be valued by using cost to cure methods; incurable by either a market approach or an income approach. Note that valuing curable functional obsolescence by the cost to cure method seems to conflict with an unpublished Memorandum opinion, in which the Supreme Court held that the cost of a planned improvement to obsolete industrial personal property functioning at 85% of its capacity

⁵ This provision is now found at W. Va. C.S.R. § 110-1P-3.2.2.a.

when the property was new could not properly be used as the measure of functional obsolescence for that property, finding that “it would be premature to reduce the value of Alcan’s industrial personal property to reflect an intended, rather than an actual, expense because it has not yet been invested in the subject property”. *Alcan Rolled Products - Ravenswood, LLC v. Griffith*, 11-1752, 2013 WL 2443084 (W. Va. June 5, 2013).

Section 3.5.3 also recognizes that functional obsolescence can arise from both superadequacy (unnecessary or excess capacity such that a portion of the property adds no value, often caused by decreased demand) or deficiency (capacity less than current market or industry standards, resulting from age, failures of timely maintenance, or capital improvements). Either superadequacy or deficiency may be curable or incurable.

Finally, this section recognizes two special circumstances. Plants that are shut down temporarily shall be valued using an income approach based on the anticipated restart data and discounted back to the assessment date; a plant that is shut down indefinitely may be appraised by considering an orderly sale of the property, either piecemeal or as a whole, or, if there is no discernible market value, may be appraised at salvage or scrap value.

Appraisal manual: Frequently encountered commercial personal properties common to numerous businesses within the taxing district are valued using current appraisal guidelines furnished by the Tax Commissioner to local assessors. This manual, last updated in July 2011, can be viewed at:
<http://tax.wv.gov/Documents/TaxForms/CountyAssessorsGuide.pdf>

¶ 619 Valuation--Unsold Lots Contained in a Recorded Plan or Plat

Law: W. Va. Code § 11-3-1b; WVCSR § 110-4-1 *et seq.*

The recording of a plat or a plan or the designation of proposed land use by a county or municipal planning authority may not be used by an assessor as the basis for assessment except as specifically provided in this rule.

When a lot or parcel within the recorded plan or plat is sold, or developed and used for a residential, commercial or industrial purpose, the assessor or the State Tax Commissioner will revalue the sold lot at market value, or based upon its actual use. The remaining lots within the recorded plan may not be revalued by the assessor or Tax Commissioner based solely on the sales of the other lots in the plan.

To value the remaining lots in a plan, the assessor or Tax Commissioner first determines the percentage of completion of improvements or infrastructure development that is in place as of the assessment date each year. The assessor or the Tax Commissioner must then obtain data reflecting the most probable selling price of comparable lots. The most probable selling price of comparable lots is then multiplied by the percentage of completion of improvements and infrastructure to yield the

appraisal value of the remaining lots. In the absence of the availability of data reflecting the selling price of comparable lots, the total is costs or a percentage of expanded costs associated with the development of the potential use as designated in the recorded plan is added to the raw land value yielding the value of the remaining lots.

¶ 620 Valuation--Vehicles, Watercraft, Aircraft and Heavy Equipment Rental Inventory

Law: W. Va. Code §§ 11-1C-5, 11-5-15, 17A-3-3a and 20-7-12a; WVCSR § 110-1N-1 *et seq.*

Automobiles: Automobiles are appraised by local assessors, based on a schedule of automobile values compiled by the State Tax Commissioner, which is based upon the lowest value shown in a nationally accepted used car guide. The assessor is to use the schedule to determine assessed value of all motor vehicles by applying a sixty percent (60%) factor to the lowest values indicated in the Tax Commissioner's schedule. Older motor vehicles excluded from the Tax Commissioner schedule because of age have their last appraised value appreciated by ten percent (10%) per year until the value of the motor vehicle reaches two hundred (\$200). Thereafter, the appraised value remains at two hundred dollars (\$200) for so long as the vehicle is owned by the taxpayer.

Trucks, recreational vehicles, motorcycles, mopeds and other vehicles: The local assessor uses a current appraisal guide published by a recognized authority, directed by the Tax Commissioner for the month of July of the current assessment year to ascertain the appraised value of these vehicles, based on the lowest values in the subject guide. Older vehicles not covered by the guides are valued by having their last appraised value depreciated by ten percent (10%) per year until the value reaches two hundred dollars (\$200). Thereafter, the appraised value remains at two hundred dollars (\$200) for so long as the vehicle is owned by the taxpayer.

Watercraft: The Tax Commissioner directs the purchase of a nationally recognized comprehensive price listing service for watercraft as the basis for appraised value. The Tax Commissioner supplies this listing to each county assessor for use in determining the appraised value of watercraft. Older watercraft that are not included in the schedule because of age are valued in the same manner as older automobiles for which there is no schedule.

Aircraft: Annually the Tax Commissioner directs county assessors to use an aircraft appraisal guide published by a nationally recognized authority. The county assessor determines the appraised value of special radio equipment and radar and other avionic equipment purchased and installed in the aircraft. The total appraised value of the aircraft is based on the retail value of both the aircraft and its navigational equipment. However, airplanes and helicopters owned or leased by commercial airlines or private carriers are now valued at their salvage value, which is defined as the lower of fair market salvage value or five percent of the original cost of the property (W. Va. Code § 11-6H-1 *et seq.*). Effective for tax year 2018, special aircraft property, which is defined in part as materials or items used in the construction, maintenance or repair of aircraft

which are intended to become affixed to an aircraft or an aircraft engine are now valued at their salvage value. House Enrolled Bill 2774 (2017 Regular Session). In *Pratt & Whitney Engine Services v. Steager* 239 W.Va. 833. 806 S.E.2d 757 (2017), the Supreme Court of Appeals, Ketchum, J., held that inventory of parts was not constitutionally exempt from ad valorem taxation under the Freeport Amendment as tangible personal property moving in interstate commerce.

Interstate Corporation Motor Vehicles: Interstate motor vehicles are defined as every truck, road tractor or semitrailer used as an interstate motor vehicle registered under a proportional registration agreement. W. Va. Code §11-6G-2. Fleets of such interstate motor vehicles are assessed an ad valorem fee based on depreciated cost, equalized at 60% and subject to an equivalent levy rate. The value is apportioned among participating states based upon mileage. W. Va. Code §11-6G-1 *et seq.* The taxpayer may appeal the resulting assessment to the West Virginia Interstate Commerce Appeals Board at its annual meeting conducted on the first Monday in July of each year. W. Va. Code §11-6G-7. The constitutionality of this scheme was upheld by the Circuit Court of Kanawha County, *Vacuum Truck Rentals LLC V Bonham*, *Circuit Court of Kanawha County*, Civil Action Number 16-AA-112; January 8, 2018.

For additional discussion of the ad valorem taxation of interstate motor vehicles through the International Registration Plan, please see ¶ 612

Heavy Equipment Rental Inventory: Effective for tax year 2019, dealers of heavy equipment rental inventory may assign a fee to each item of heavy equipment rental inventory payable by the renter in an amount not greater than 2 ½% of the rental charge for each item of heavy equipment rental inventory. The dealer is obliged to remit the fee to the appropriate County Sheriff. House Enrolled Bill 2734 (2017 Regular Session)

¶ 621 Return of Property

Law: W. Va. Code §§ 11-3-2, 11-3-3a, 11-3-12, 11-3-14, 11-3-15, 11-3-15a, and 11-6-1

Property Assessed by County Assessor:

Individuals: Noncorporate property owners are to list the real and personal property owned by them and provide the list to the assessor along with the owner's estimate of the worth of the personal property. Any person holding real or personal property in a representative or fiduciary capacity must return that property to the assessor on such forms as are provided by the assessor and must include the owner's value for both real and personal property. The Code does not specify a deadline for this return, but it precludes the assessor from setting the date due prior to July 10. Notices of increase, if required, must be issued by January 15, and the land books must be completed by January 30 and delivered to the County Commission by February 1. Many county assessors require these returns to be filed by October 1.

Corporations: Corporations are required to file a verified property tax return with the assessor between July 1 and September 1 of each year in the county in which the corporation's principal office or chief place of business in the state is located or, if its principal office or chief place of business is located outside of West Virginia, in the county in which the property subject to taxation is located. These returns must include the fair market value for both real and tangible personal property.

Non-corporate businesses: Any unincorporated firm or individual in any taxable trade or business, except the business of agriculture, must annually, between July 1 and September 1 make a verified, written report as of the first day of the assessment year to the assessor. These returns must include the fair market value for both real and tangible personal property.

Single-member limited liability companies: For assessment years beginning on or after July 1, 2011, the property of a single-member limited liability company is reported by the owner of that company.

Improvements: Where real property, subject to payment of property taxes, is improved so that the value of that property is increased by more than \$1,000, the property owner must give notice of the improvement to the assessor within 60 days on forms provided by the assessor. This notice must provide the following information:

- (1) A statement that improvements are being or have been made;
- (2) The location or address of the property;
- (3) The name of the owner or owners of the property.

Any report filed by any mine, mill factory or other industrial establishment with the assessor before June 15 which discloses with certainty any construction or improvements made during the preceding 12 months complies with this requirement. Also, providing the assessor with a copy of any building permit issued by any county or city satisfies this requirement.

Penalties for Failure to File: Failure to list and return property for taxation carries a possible penalty of \$25 to \$100, together with a forfeiture equal to 1% of the property not returned for taxation. Each failure to make a return is a separate offense but the total forfeiture for cumulative failures to return a property may not exceed 5% of the property not returned. The forfeiture may be enforced for any such failure occurring in any year not exceeding five years immediately prior to the time the same is discovered. (W. Va. Code § 11-3-10.) In addition, it is now a misdemeanor for “[a]ny owner, operator or producer, whether a natural person, limited liability company, corporation, partnership, joint venture or other enterprise” to “willfully fails to make a return within thirty days from the day it is herein required.” Upon conviction, the business may be fined \$100 for each month the failure continues.

The most stringent penalty, however, has been somewhat relaxed. Under the prior version of W. Va. Code § 11-3-10, a taxpayer that failed to file a return, refused to answer or falsely answered a question posed by an assessor or the Tax Commissioner, or that failed to deliver any statement required by law was denied all remedy provided by law for the correction of any assessment. In other words, a taxpayer who fails to file a property tax return has no way to protest the assessor or Tax Commissioner's assessed value, no matter what it turns out to be. Under the new version of that statute, that harsh sanction can still be enforced, but only after the assessor or the Tax Commissioner "notified such person, firm or corporation in writing that this penalty will be asserted and the requested information is not provided within fifteen days of the date of receipt of the notice."

In addition to these penalties, at least one county takes the position that the assessor or prosecuting attorney may file a request with the County Commission for correction of the prior erroneous assessments. (W. Va. Code § 11-3-27.) It is not clear for how many previous years the request can be made.

Property Appraised by State Tax Commissioner: owners or operators of industrial property, oil-producing property and natural gas-producing property must file by August 1, and owners or operators of other natural resource property must file by May 1 preceding the July 1 assessment date.

When a tract of land, under lease for coal, oil, gas, limestone or other mineral or timber, is sold by the state as forfeited, after having become delinquent for the nonpayment of taxes and purchased by the state at the sheriff's sale, such lease is not extinguished by the delinquency and forfeiture where the lease was separately assessed to the owner thereof as personalty and the taxes thereon were paid for the year of the delinquency of the land. (*State v. Black Band Coal Co.*, 113 W.Va. 872, 169 S.E. 614 (1933).) Conversely, even though a severance of the mineral or timber has occurred, if the separately owned mineral or timber has not been separately assessed but the entire estate has been assessed to the surface owner, the delinquency and forfeiture of the estate charged to the surface owner carries with it the mineral and timber. (*State v. Black Band Coal Co.*, *supra* at 615.)

Utilities: By the first day of May of each year, each public utility must file a return with the Board of Public Works covering the preceding calendar year.

¶ 622 Procedure for Contesting Tax

Law: W. Va. Code §§ 11-3-24, 11-3-24a, 11-3-25, 11-3-27, 11-6-12 and 11-6-12a

There are two types of objections that can be raised as to property taxes: objections as to the *value* of the property (valuation disputes), and objections as to whether or not certain property is taxable or has been properly classified (taxability disputes). There are separate and distinct procedures specified by statute for each type of dispute. Additionally, the procedures are different depending upon whether the property was

assessed by the county assessor, the State Tax Commissioner, or by the Board of Public Works.

Valuation disputes: Commercial and residential property valued by the county assessor: If the assessor increases the value of a taxpayer's property, the taxpayer will now receive a notice of the increase by January 15, which will provide slightly more time in which to decide whether to protest the assessment and to prepare for the protest. Even before the required notice is issued, however, the Code now explicitly provides that at any time after the required returns have been filed, a taxpayer may "apply to the assessor of the county in which the property was situated on the assessment date for information about the classification, taxability or valuation of the property for property tax purposes for the tax year following the July 1 assessment date." W. Va. Code § 11-3-23a(a). There was no similar provision under the previous Code; a taxpayer's only recourse was to file a Freedom of Information Act request to obtain the data prior to the date the property books were completed and delivered to the county commission.

For valuation issues, a taxpayer whose property is appraised by the Assessor who applies to the Assessor for information, who is dissatisfied with the Assessor's response, and who receives a notice of increase for real property or business personal property may (but is not required) to use a new informal review process wherein the taxpayer files a Petition for Review by the Assessor. For either type of property, the taxpayer must provide the taxpayer's opinion of the true and actual value of the property and must support that value with "substantial information." For business personal property, the term "substantial information" is not defined; for real property, it means identifying which of the three approaches to value (cost approach, income approach, or market data approach) the taxpayer used to value the property, together with specified information for each approach. This Petition must be filed within eight business days (excluding Saturdays, Sundays, and legal holidays) after the date the taxpayer receives the notice of increased assessment under W. Va. Code § 11-3-2a or W. Va. Code § 11-3-15b or the notice of increased value for real property was published as a Class II-0 legal advertisement as provided in that section. The Assessor must meet with the taxpayer if the taxpayer so requests and must respond in writing by February 10.

If the Assessor grants the requested relief, the taxpayer may not further appeal the Assessor's decision. If the taxpayer and the Assessor reach a negotiated settlement, neither may appeal. However, if the assessor denies the taxpayer's petition in whole or in part, or if the assessor does not respond by Feb. 10, or if the taxpayer elects to forgo the informal Petition for Review process, the taxpayer may file a protest with the county commission.

Valuation disputes: Property Appraised by State Tax Commissioner:

The Tax Commissioner is now required to provide the amount of his tentative appraisals to the taxpayer for oil-producing property, natural gas-producing property and managed timberland by December 1, and for other property appraised by him or her by October 15. W. Va. Code § 11-6k-4(e). There is a corresponding informal process by

which a taxpayer who receives a Notice of Tentative Assessment from the Tax Commissioner can petition the Tax Commissioner requesting a review of the tentative appraisal. In addition, the assessor where the property is located also receives a copy of the tentative appraisal and can request this informal review. The Tax Commissioner must meet with the taxpayer if the taxpayer requests a meeting and must rule on the request by January 15. If the Tax Commissioner agrees with the petition the tentative appraisal is modified accordingly. However, whether or not the Tax Commissioner grants the relief requested, the taxpayer may still appeal to the county commission. W. Va. Code § 11-6k-6.

First Level Adjudicative Review: The County Commission

For property appraised by the county assessor or by the State Tax Commissioner, and whether or not the taxpayer has availed himself of the new informal review procedures, unresolved valuation disputes must be presented to the county commission for review.

The first opportunity to do so is in February, when the county commission, the county governing body, meets as a Board of Equalization and Review to review and equalize assessments made by the assessor or State Tax Commissioner. The Board must meet no later than the first day of February, must not adjourn for longer than three days at a time until this work is completed, and cannot remain in session for a longer period than twenty-eight days, and cannot adjourn *sine die* before the fifteenth day of February. As a practical matter, most if not all county commissions require taxpayers who dispute the value of their property to meet with and attempt to resolve the dispute with the assessor or State Tax Commissioner.

Any unresolved dispute with the assessor over valuation of property must be presented to the board of equalization and review by the property owner by February 20, even if the board has already adjourned *sine die*. Any person, whether having property interest in the property assessed or not, who is aggrieved by any assessment has standing to appeal that assessment. *Tug Valley Recovery Center, Inc. v. Mingo County Commission*, 164 W.Va. 94, 101, 261 S.E. 2d 165, 170 (1979). The protest must be filed in writing and must identify “the amount of the assessed value the taxpayer believes to be in controversy and state[] generally the taxpayer’s reason or reasons for filing the protest.”

A taxpayer may alternatively elect to have its protest heard by the county commission sitting as a board of assessment appeals in October, rather than by the board of equalization and review in February. This election may be made either when the written protest is filed or filed, in writing, on or before the day on which the appeal is to be heard by the board of equalization and review. Upon request of any party, the board of assessment appeals may, on or before October 1, develop a discovery schedule for the exchange of information between the taxpayer and the assessor and, in matters involving industrial property or natural resources property, the Tax Commissioner. This eight month delay and the opportunity for discovery will give the

taxpayer a much better opportunity to prepare the appeal. The board of assessment appeals adjourns *sine die* by October 31 unless “the board, by majority vote, agrees to extend the term if necessary to afford the parties due process and to complete its work.”

The board of assessment appeals may assign the appeal to a hearing examiner for the taking of evidence if the hearing examiner is mutually agreed to by the parties to the appeal. Theoretically, this provision means the parties could agree to appoint someone knowledgeable in both appraisal techniques as well as the law to hear property tax appeals.

Hearings on valuation disputes before a board of equalization and review or board of assessment appeals are informal, and do not demand extensive due process procedures. The formal rules of evidence are not applicable. *In re Tax Assessments Against Pocahontas Land Co.*, 172 W.Va. 53, 303 S.E.2d 691 (1983). “The burden upon the taxpayer to demonstrate error with respect to the State's valuation is heavy in these adjudicative proceedings: “It is a general rule that valuations for taxation purposes fixed by an assessing officer are presumed to be correct. The burden of showing an assessment to be erroneous is, of course, upon the taxpayer, and proof of such fact must be clear.” In challenging a tax valuation, ‘[t]he burden [of proof] clearly falls upon ... [the taxpayer] to demonstrate through clear and convincing evidence that the tax assessments were erroneous.’ *In Re Tax Assessment Against American Bituminous Power Partners, L.P.*, 208 W.Va. 250, 539 S.E.2d 757 (2000) (internal citations omitted).

Failure to protest an assessment to the board of equalization and review or the board of assessment appeals is a waiver of the protest for that year.

Valuation of Interstate Trucks, Tractors and Power Units Pursuant to the International Registration Plan: Objections to the valuation of an interstate truck fleet valued pursuant to the International Registration Plan are heard by the West Virginia Interstate Commerce Appeals Board, a troika consisting of the auditor, state tax commissioner, and commissioner of the division of motor vehicles, which meets, when there is a protest, on the 1st Monday of July of each year. Appeals from decisions of the West Virginia Interstate Commerce Appeals Board are taken to the Circuit Court of Kanawha County. Whether the appeal goes to the circuit court as an appeal or for de novo hearing is currently in dispute. West Virginia Code §11-6G-7; §11-6G-8.

Constitutional Issues with the Review by the County Commission: Two due process issues with this first level appeals process have been raised repeatedly in the Supreme Court of Appeals. In *In re Tax Assessment of Foster Foundation's Woodlands Retirement Community*, 223 W.Va. 14, 672 S.E.2d 150 (2008), the Court held that it was not unconstitutional for the county commission sitting as a board of equalization and review to act as the first level adjudicative tribunal to hear these appeals, and upheld the imposition of the clear and convincing burden of proof on the taxpayer. This

holding was immediately reaffirmed in *Bayer MaterialScience LLC et al. v. State Tax Commissioner, et al.*, 223 W.Va. 38, 672 S.E.2d 174 (2008).

In *Caperton v. A.T. Massey Coal Co., Inc.*, 129 S.Ct. 2252 (2009), the United States Supreme Court appeared to directly contradict the West Virginia Supreme Court's portrayal in *Foster* (see *Foster*, 223 W. Va. at 24, 672 S.E.2d at 160). that "[w]hen faced with cases questioning the impartiality of a hearing tribunal, the Supreme Court of the United States generally has found a hearing tribunal to be partial when there exists a direct pecuniary interest in the outcome of the litigation.... However, when no such pecuniary interest is present, the Supreme Court of the United States typically has found the tribunal to satisfy the requirements of due process."⁶ Nevertheless, in *Mountain America, LLC v. Huffman*, 224 W.Va. 669, 687 S.E.2d 768 (2009), cert. denied 130 S.Ct. 2377 (2010) without even mentioning the holding in *Caperton* decided almost six months earlier, the West Virginia Supreme Court reaffirmed its decisions in *Foster* that W. Va. Code § 11-3-24 is facially constitutional as to whether the county commission may impartially sit as the board of equalization and review. There, the Court also rejected several other challenges to the overall process by which taxpayers are required to protest property tax assessments, including what the taxpayer described as "the cumulative effect of multiple prejudicial aspects of West Virginia's property tax appeals system", which, according to the taxpayer, "weighs heavily against the 'appearance of justice' required under the Due Process Clause".

On several occasions since the decisions in *Bayer MaterialScience* and *Foster* were released, the Court has also reaffirmed that the clear and convincing standard of proof is applicable in hearings before a county commission sitting as a board of equalization and review in valuation appeals. See, e.g. *Tax Assessment Against Purple Turtle, LLC v. Gooden*, 223 W.Va. 755, 679 S.E.2d 587 (2009); *Stone Brooke Limited Partnership v. Sisinni, Assessor, et. al., etc.*, 224 W.Va. 691, 688 S.E.2d 300 (2009), and *Mountain America, LLC v. Huffman*, 224 W.Va. 669, 687 S.E.2d 768 (2009). In each of those cases, however, Justice Benjamin reaffirmed his belief that there is no justification for applying a higher standard of proof on the taxpayer than applies to the taxing authorities. W. Va. Code § 11-3-25(e) now contains this rather cryptic provision: "[a]ll persons applying for relief to the circuit court under this section shall be governed by the same presumptions, burdens and standards of proof as established by law for taxpayers applying for such relief". This language seems to indicate that the Legislature

⁶ The United States Supreme Court summarized its own cases this way: "In *Ward v. Monroeville*, 409 U.S. 57, a conviction in another mayor's court was invalidated even though the fines assessed went only to the town's general fisc, because the mayor faced a " ' possible temptation' " created by his "executive responsibilities for village finances." *Id.*, at 60. Recusal was also required where an Alabama Supreme Court justice cast the deciding vote upholding a punitive damages award while he was the lead plaintiff in a nearly identical suit pending in Alabama's lower courts. *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813. The proper constitutional inquiry was not "whether in fact [the justice] was influenced," *id.*, at 825, but "whether sitting on [that] case ... ' would offer a possible temptation to the average ... judge to ... lead him not to hold the balance nice, clear and true," ' " *ibid.* While the "degree or kind of interest ... sufficient to disqualify a judge ... '[could not] be defined with precision,' " *id.*, at 822, the test did have an objective component. *Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 869 (2009).

could explicitly define the applicable presumptions, burdens, and standards of proof, but it is unclear why it didn't.

Appeals to Circuit Court. Upon receiving an adverse determination before the county commission, a taxpayer has a statutory right to judicial review before the circuit court (trial court of record) of the county in which the property is located as provided by W. Va. Code § 11-3-25. In the *American Bituminous* case, the Supreme Court also addressed the standard of review for this appeal: “The statute provides little in the way of guidance as to the scope of judicial review, although it does expressly limit review to the record made before the county commission. Given this limitation, we have previously indicated that review before the circuit court is confined to determining whether the challenged property valuation is supported by substantial evidence or otherwise in contravention of any regulation, statute, or constitutional provision. As this Court's previous cases suggest, and as we have recognized in other contexts involving taxation, judicial review of a decision of a board of equalization and review regarding a challenged tax-assessment valuation is limited to roughly the same scope permitted under the West Virginia Administrative Procedures Act, W. Va. Code ch. 29A” (internal citations omitted).

The appeal must be heard by the circuit court only upon the record made before the board of equalization and review or board of assessment appeals, if there was an appearance by or on behalf of the owner before the board or if actual notice, certified by the commission, was given to the owner. Otherwise, the appeal is heard *de novo* by the circuit court. In *Shenandoah Sales & Service, Inc. v. Assessor of Jefferson County*, 228 W.Va. 762, 724 S.E.2d 733 (2012), language in W. Va. Code § 11-3-25(b) that permitted the appeal to be taken by the taxpayer or by “his or her agent or attorney” was unconstitutional insofar as it permitted a non-lawyer agent to file an appeal in circuit court constituted a legislative encroachment on the Supreme Court's exclusive authority to define, regulate and control the practice of law. The statute was amended in 2014 to reflect the ruling in *Shenandoah Sales & Service, Inc.*

W. Va. Code § 11-3-25(b) requires that “the party desiring to take an appeal shall have the evidence taken at the hearing of the application before either board, including a transcript of all testimony and all papers, motions, documents, evidence and records as were before the board, certified by the county clerk and transmitted to the circuit court as provided in section four, article three, chapter fifty-eight of this code, except that, any other provision of this code notwithstanding, the evidence shall be certified and transmitted *within thirty days after the petition for appeal is filed with the court or judge, in vacation*” (emphasis added). The Supreme Court has held that, under previous versions of this statute, that both the petition for appeal *and* the original record before the Board must be filed within the time prescribed by the statute” and that the circuit court must refuse to hear the appeal if the petitioner fails to file the original record within this time period. *Rawl Sales & Processing Co. v. County Com'n of Mingo County*, 191 W.Va. 127, 443 S.E.2d 595 (1994). The new version enlarges the time during which the record can be filed. Note that it is common for a Board to make an audio recording of its proceedings, and it may be possible for a court reporter to make a transcript from

that audio recording. Another alternative, of course, and the better practice, is for a court reporter to attend the hearing and transcribe the proceedings. In any event, time is of the essence.

If the circuit court determines that the record made before the board is inadequate, either because (1) the parties had insufficient time to present evidence at the hearing before the board to make a proper record, (2) the parties received insufficient notice of changes in the assessed value of the property and the reason or reasons for the changes to make a proper record at the hearing before the board, (3) of irregularities in the procedures followed at the hearing before the board, or (4) for any other reason not involving the negligence of the party alleging that the record is inadequate, the court may remand the appeal back to the county commission of the county in which the property is located, even after the county commission has adjourned *sine die* as a board of equalization and review or a board of assessment appeals for the tax year in which the appeal arose, for the purpose of developing an adequate record upon which the appeal can be decided. The county commission must conduct a hearing in the remanded matter within 90 days of circuit court's order.

If the appeal is conducted on the record, it now must be briefed, argued, and submitted to the court within eight months of having been filed, and the court must issue its decision within ninety days after the last brief was filed. The new Code also confirms that this is a post-deprivation appeals process. Taxpayer must pay disputed taxes and not let taxes fall delinquent; if they do, the circuit court must dismiss the appeal unless taxes due are paid within 20 days of second half taxes becoming delinquent. If the final result of the circuit court's decision is that the taxpayer overpaid his taxes, the county shall pay interest at the rate established in W. Va. Code §§ 11-10-17 and 11-10-17a for overpayments of taxes collected by the Tax Commissioner. The interest is computed from the date the overpayment was received by the sheriff to the date of the refund check or the date the credit is actually taken against taxes that become due after the order of the court becomes final. In several cases, the Supreme Court has held that the Assessor or the Tax Commissioner has wide discretion to choose among the methods (cost, income, or market data approaches) to be used to value the property. "Title 110, Series 1P of the West Virginia Code of State Rules confers upon the State Tax Commissioner discretion in choosing and applying the most accurate method of appraising commercial and industrial properties. The exercise of such discretion will not be disturbed upon judicial review absent a showing of abuse of discretion." Syllabus point 5, *In re Tax Assessment Against American Bituminous Power Partners, L.P.*, 208 W.Va. 250, 539 S.E.2d 757 (2000); see also Syllabus Point 4 in *Stone Brooke Ltd. Partnership v. Sisinni*. The virtually unlimited nature of this discretion is illustrated in *Pope Properties, supra*, in which the Assessor's selection of the market data approach for valuing condominium units was upheld despite the fact that the Assessor incorrectly classified the properties as non-commercial property.

In *Stone Brooke*, the Supreme Court imposed a requirement that a circuit court produce written findings of fact and conclusions of law when it hears a valuation appeal

for commercial property from a county commission sitting as a board of equalization and review. In that case, the Supreme Court of Appeals directed that:

to ensure that this Court has a complete record from which to review future appeals of *ad valorem* tax assessments of commercial real property, we hold that when a circuit court reviews an appraisal of commercial real property made for *ad valorem* taxation purposes, the court shall, in its final order, make findings of fact and conclusions of law addressing the assessing officer's consideration of the required appraisal factors set forth in W.V.C.S.R. §§ 110-1P-2.1.1 to 2.1.4 (1991). Note: these factors are now found at WV C.S.R. §§ 110-1P-3.1.1 to 3.1.4.

These are the same factors listed in ¶ 617 above. While taxpayers are still required to prove that the taxing authority's value is not accurate by clear and convincing evidence, once that is done, the burden of production falls upon the taxing authority to prove that his assessment is accurate; in the case of commercial or industrial property, the taxing authority must also show that it properly evaluated each and every factor listed in the Tax Commissioner's legislative rules. *In re Tax Assessments Against Pocahontas Land Co.*, 172 W.Va. 53, 61, 303 S.E.2d 691, 699 (1983); see also *Stone Brooke*, *supra*, 224 W.Va. at 701, 688 S.E.2d at 310; *Pope Properties*, *supra*.

Subsequent appeals: In a second *Mountain America* case, the Supreme Court of Appeals ruled that "[t]he judgment of a circuit court rendered in a statutory proceeding brought by a taxpayer for the purpose of testing the validity of an *ad valorem* property tax is not *res adjudicata* of the same questions raised by the same taxpayer in a like proceeding for the purpose of testing the validity of a similar tax for a subsequent year, the demand for the tax in the subsequent year being a different demand from that for the former." *Mountain America, LLC v. Huffman*, 229 W. Va. 708, 735 SE2d 711 (2012). That outcome seems only fair: a taxpayer who has an issue for a particular year must file separate appeals for subsequent years while the original appeal is litigated, and a taxpayer who bears that expense shouldn't have the appeals for subsequent years barred once the first is finally resolved. However, Justice Ketchum filed a troubling dissenting opinion indicating that he believes that subsequent appeals should be barred under both the doctrines of *res adjudicata* and collateral estoppel.

Valuation disputes: Utility Property

The State Tax Commissioner must communicate his tentative assessment, together with his work papers, to the Board of Public Works and must communicate his tentative assessment to the taxpayer by September 15. The taxpayer is entitled to review the worksheets. W. Va. Code § 11-6-9. The Board of Public Works then finalizes the assessment by October 1. In doing so, the Board may consider the tentative assessment, the return filed by the taxpayer, the worksheets prepared by the State Tax Commissioner, and such other evidence as the taxpayer offers. The taxpayer has the right to appear before the Board and offer evidence. W. Va. Code § 11-6-11.

If the taxpayer disagrees with the value set by the Board of Public Works, he may file a verified petition for appeal in the circuit court in the county in which the property assessed is located, or, if the property is located in several counties, in the circuit court in the county where that taxpayer's assessment was largest for the previous tax year. The Secretary of State, as secretary to the Board of Public Works must be served with a copy of the petition for appeal. The State Tax Commissioner may also appeal the value as set by the Board. In either case, notice of the hearing in circuit court is required on the adverse party at least 15 days before the hearing. The circuit court hears the case *de novo* and can either confirm the value set by the Board or may ascertain and fix the true and actual value of the property. The Board's value is presumed to be correct, and the taxpayer bears the burden of proving the Board's value to be excessive by clear and convincing evidence. *Western Md. Ry. Co. v. Board of Public Works*, 90 S.E.2d 438, 141 W.Va. 413 (1955).

Classification or taxability disputes: W. Va. Code § 11-3-24a requires a taxpayer who is dissatisfied with how his property has been classified or who disputes whether it is taxable to object in writing to the assessor at any time after property is returned for taxation and up to and including the time the property books are before the Board of Equalization and Review. The assessor must either sustain the objection and make the proper corrections or explain, in writing if requested, why the objection was not sustained. The assessor may, and if the taxpayer so requests, shall certify the question to the State Tax Commissioner for instruction as to how the property must be treated. If the objection is certified to the Tax Commissioner, the taxpayer and the assessor must supply verified descriptions of the property and other facts, either jointly or separately. The Tax Commissioner has the authority to pursue any inquiry and procure any information which may be necessary for the disposition of the issue.

The Tax Commissioner must instruct the assessor no later than February 28th as to how the property is to be treated, and this determination is binding on the Assessor. Either the assessor or the taxpayer may seek review of the Tax Commissioner's decision, which is commonly referred to as a "Property Tax Ruling" or a "Taxability Ruling." The statute now provides an explicit deadline of 30 days after notice of the Tax Commissioner's ruling is received. As was true for a valuation appeal, W. Va. Code § 11-3-25 governs the rules for the appeal of a classification or taxability appeal. That section, however, provides one significant difference between the two types of appeals. An appeal of a classification or taxability dispute is heard *de novo* by the circuit court.

Appeal to the Supreme Court: If the assessed value of the property is fifty thousand dollars (\$50,000) or more, either party to the circuit court valuation appeal may appeal the circuit court's decision to the West Virginia Supreme Court of Appeals. Either party to a circuit court classification or taxability appeal may appeal the circuit court's decision to the West Virginia Supreme Court of Appeals regardless of the amount in issue.

¶ 623 Exonerations

Wrong entry in tax books: Any taxpayer, or the prosecuting attorney or Tax Commissioner on behalf of the state, county and districts, claiming to be aggrieved by any entry in the property books of the county, including entries with respect to classification and taxability of property, may apply for relief to the county commission of the county in which such books are made out. W. Va. Code § 11-3-27 provides that in order to grant the application for relief, the county commission must make two findings:

- (1) The entry must be one “resulting from a clerical error or a mistake occasioned by an unintentional or inadvertent act as distinguished from a mistake growing out of negligence or the exercise of poor judgment,” and
- (2) The request must be made “within one year from the time the property books are delivered to the sheriff or within one year from the time the clerical error or mistake is discovered or reasonably could have been discovered.”

In *State ex rel. Prosecuting Attorney of Kanawha County v. Bayer Corp.*, 223 W.Va. 146, 672 S.E.2d 282 (2008), the Court held that a *de novo* review in certiorari of a county commission’s decision in an exoneration case by a circuit court did not violate the separation of powers provision in the West Virginia Constitution and held that, as is true in valuation appeals, the taxpayer bears the burden of proving by clear and convincing evidence that he is entitled to his requested exoneration. The Court also held that, while the terms “unintentional,” “inadvertent,” “negligent” and “poor judgment” are synonymous when not given specific definitions, “the ‘duty of care’ element of negligence found in [West Virginia’s] tort cases should be used to distinguish an unintentional or inadvertent act from that of a negligent act or exercise of poor judgment” and that “relief under the statute may not be granted if it is shown that a taxpayer breached its duty of care.”

¶ 624 Constitutional Issue Remaining after SB 401

In the 2010 Regular Session, the Legislature enacted SB 401 (Chapter 185, Acts, Regular Session, 2010). While this legislation makes some incremental improvements to the property tax appeals process, it unfortunately does nothing to correct the glaring due process issues with the first level tribunal. The most serious constitutional issue remaining after the enactment of SB 401 is the fact that, whether it sits as a board of equalization and review or a board of assessment appeals, the county commission still serves as the first level adjudicative tribunal. Although the county commission sitting as a board of assessment appeals is now permitted to appoint an independent hearing examiner with relevant experience and expertise to hear and fairly determine the outcome of appeals, a county commission that is determined to protect the county’s fisc isn’t going to agree to a hearing examiner if it has any doubt whatsoever as to the outcome of the appeal; rather, the county commission will simply to continue to hear and deny all appeals. All of the other changes made by the Legislature aren’t going to change the inevitable outcome of protests heard by a county commission so motivated.

Taxpayers have every right to be frustrated by the requirement to have their appeals heard by an obviously biased tribunal. That frustration can only be more acute following the decision in *Rissler v. Jefferson County Bd. of Zoning Appeals*, 225 W.Va. 346, 693 S.E.2d 321 (2010). There, the Supreme Court of Appeals repeatedly cited *Caperton*, *Concrete Pipe*, *Ward*, and *Tumey*, and demonstrated that they fully understood that due process demands an unbiased tribunal. The Court decided that two members of the Jefferson County Board of Zoning Appeals should have been disqualified from the Board's consideration of a dispute over an application for a conditional use permit (CUP) that would enable it to build a new subdivision in a rural portion of Jefferson County.

Also, despite Justice Benjamin's repeated reaffirmations that there is no justification for applying a higher standard of proof on the taxpayer than applies to the taxing authorities, W. Va. Code § 11-3-25(e) now provides that "[a]ll persons applying for relief to the circuit court under this section shall be governed by the same presumptions, burdens and standards of proof as established by law for taxpayers applying for such relief." In other words, the Legislature explicitly assured county officials that their unfair advantage in the applicable presumptions and standards of proof will continue unchanged.

In *Rissler*, the Court insisted that even the appearance of an impropriety be avoided. That case undoubtedly is consistent with the letter and spirit of the holdings of the United States Supreme Court, and commendably recognizes that justice demands that litigants feel that they have received a fair trial before a fair tribunal, regardless of the outcome of their case. How, then, is it possible to square the holding in *Rissler* with the holdings in *Foster*, *Bayer MaterialScience*, and *Mountain America*?

¶ 625 Payment of Tax

Law: W. Va. Code §§ 11A-1-3 and 11A-1-8a

Property taxes are collected by the sheriff of the county and are payable in two installments. The first installment is due on September 1 of the tax year. The second installment is due on March 1 of the following year. Prepayment discounts of 2 1/2% and delinquent payment interest of nine percent (9%) per annum are applicable.

The sheriff may, with the consent of the county commission, contract with one or more banks doing business in the county to receive property tax payments.

Public utilities: The auditor collects the property tax from the public utility and deposits it in the State Treasury, which, in turn, pays the appropriate sums to the sheriff of each county where the public utility is located.

¶ 626 Lien for Tax

Law: W. Va. Code §§ 11-6-23 and 11A-1-2

A lien for taxes assessed and interest and other charges attaches to real property on July 1st for taxes payable for the ensuing fiscal year, unless the taxes are assessed on operating public utility property. W. Va. Code § 11A-1-2. A lien for taxes on public service business property attached on December 31st following commencement of the July 1st assessment year. W. Va. Code § 11-6-23.

Although there is no lien denominated as such on personal property after assessment, the sheriff may distrain for delinquent taxes any goods and chattels belonging to the person assessed and the goods and chattels may be distrained even though they have been transferred to another person (W. Va. Code §§ 11A-2-3 and 11A-2-5; *George F. Hazelwood v. Pitsenbarger, supra*, at ¶ 610).

Additionally, if a business is delinquent in paying personal property taxes for a calendar year, the Tax Commissioner may suspend the business registration certificate of the business until they are paid, as provided in W. Va. Code § 11-12-5(b).

¶ 627 Property Tax Issues in Bankruptcy

In *In re Columbia Gas Transmission Corp.*, 37 F.3d 982, 986 (3d Cir. 1994), the US Circuit Court of Appeals for the 3rd Circuit held that, for the purposes of bankruptcy, property taxes are incurred as of the assessment date, even though the amount of tax due is not yet determined at that time.

¶ 628 Property Tax Records: Freedom of Information Act

Hurlbert v. Matkovich, 233 W. Va. 583, 760 S.E.2d 152 (2014) involved a request from an out-of-state information technology company made to the State Tax Commissioner for “a copy, on CD or similar electronic media, of both the assessment files and the CAMA files for all real property in all counties.” The requestor enclosed a six-page itemization of the fields of data from the CAMA files they were requesting. All county assessors in West Virginia perform input data collected during their assessment functions into a statewide Integrated Assessment System (“IAS”) maintained and administered by the Tax Commissioner.⁷ The Tax Commissioner has access to the information in the IAS (and therefore the CAMA files) for purposes of supervision, auditing, and oversight; however, only the county assessors can input or change the data therein.

As part of the real property assessment process, the county assessor is charged with “mak[ing] out the land books” which contain the tax ticket number, taxpayer name,

⁷ According to the Assessor’s Manual prepared by the State Tax Division, the IAS is divided into three modules. The Computer Assisted Mass Appraisal (“CAMA”) System, also known as the “CA” system, appraises all surface and fee real property. The Computer Assisted Natural Resource (“NR”) System appraises all mineral properties, both severed and unsevered. The Computer Assisted Personal Property (“PP”) System appraises all tangible personal property.
See <http://www.state.wv.us/taxrev/publications/propertyTax/countyAssessorsGuide.pdf>

map, parcel, deed book/page, property description, assessed value, and tax for each parcel of property in the county, as more particularly described in W. Va. Code § 11-4-1 *et seq.* This information is publicly available in the county offices. This information was referred to by the Court as the “assessment files”.

By contrast, the CAMA files, include more detailed information about properties and may include sketches/photos of the property, floor plans, number of bathrooms/bedrooms, type of construction material, type of heating, topography, etc. In addition, the CAMA files may contain information which the Tax Commissioner and the Assessor of Kanawha County (the “respondents”) characterized as “sensitive and personal information”, such as whether the residence has a security system, whether the resident is home during the day, whether the resident has a disability, whether the residence is unoccupied due to nursing home stays or otherwise vacant. With regard to commercial properties, the CAMA files contain information regarding profits/losses, blueprints, photographs, business income, and other information that could ostensibly provide a competitive advantage. The CAMA files for industrial properties contain similar information but also include the names of buildings and types of storage/operation in each, which respondents alleged presented homeland security issues.

The Tax Commissioner granted the FOIA request for the assessment files in exchange for payment of \$9.23 in copying expense; and denied the request for the CAMA files on the basis that the assessors, not the State Tax Commissioner, were the custodian of the CAMA records. At no time prior to the litigation did the Tax Commissioner claim any statutorily-enumerated FOIA exemption; rather, it claimed simply that it was not the custodian of the CAMA files. The requestor bought a declaratory judgment action in the Circuit Court of Kanawha County, which granted summary judgment in favor of the respondents. The circuit court ruled that the CAMA files were exempt from production under FOIA. Because it found that 1) certain of the CAMA data is exempt from disclosure as “return information” and security system information specifically exempted by W. Va. Code § 11-1A-23(a) and “trade secrets” exempted by West Virginia Code § 29B-1-4(a)(1); 2) the CAMA files contained “information of a personal nature,” the disclosure of which constituted an unreasonable invasion of privacy pursuant to the five-factor test in Syllabus Point 2 of *Child Prot. Grp. v. Cline*, 177 W.Va. 29, 350 S.E.2d 541 (1986); and 3) because of the foregoing, the issue of whether the Tax Commissioner was the “custodian” of the CAMA files was moot.

The Supreme Court of Appeals reversed this decision and held that for FOIA purposes, the State Tax Commissioner is, in fact, the custodian of the CAMA records and that the CAMA records in total do not constitute either “returns and return information” which the State Tax Commissioner is required to treat as secret under W. Va. Code § 11-1A-23(a), or “personal information” exempt from disclosure under W. Va. Code § 29B-1-4(a). It then remanded the case to the circuit court with directions that the circuit court require submission of a *Vaughn* index containing the specific exemptions claimed by respondents as to the specific fields of data in the CAMA files,

whereupon the circuit court is to evaluate the specific categories of information sought in accordance with the exemptions delineated in West Virginia Code § 11-1A-23(a) and West Virginia Code § 29B-1-4.

Under this ruling, then, FOIA requests may be directed to the Tax Commissioner for both assessment files (that is, the limited information that is contained in the land books), and for CAMA data. If the Tax Commissioner believes that specific fields of data should not be disclosed, he is required to produce a *Vaughn* index showing specifically which fields of data are should not be produced.

¶ 629 Specimen Return-Business Property Return-STC 12:32C

**STATE OF WEST VIRGINIA
Office of County Assessor
Commercial Business Property Return**

For Internal
Use

NAICS

THIS RETURN IS TO BE FILED AS SOON AS POSSIBLE AFTER JULY 1, BUT NO LATER THAN SEPTEMBER 1. IF YOU ARE THE OWNER OF INDUSTRIAL BUSINESS PROPERTY YOU NEED NOT COMPLETE THIS FORM. CONTACT THE PROPERTY TAX DIVISION OF THE DEPARTMENT OF TAX AND REVENUE CONCERNING FORM STC 12:32I FOR INDUSTRIAL PROPERTY. FILING LATE OR FAILURE TO FILE MAY RESULT IN A PENALTY OF \$25 TO \$100.

The following is a complete and accurate report of all property owned by the undersigned at this location on July 1, _____.

This business is in the County of _____; District of: _____; Town/City of: _____.

BASIC BUSINESS INFORMATION

(PP11) BUSINESS NAME AND MAILING ADDRESS ADDRESS	(PP51) AGENT OR PREPARER'S NAME AND ADDRESS
NAME _____	NAME _____
ADDRESS _____	ADDRESS _____
CITY _____	CITY _____
STATE _____ ZIP CODE _____	STATE _____ ZIP CODE _____
PHONE () _____ EXTENSION _____	PHONE () _____ EXTENSION _____

Federal Employers Identification Number
(FEIN) REQUIRED: _____ PLACE WHERE RECORDS ARE KEPT _____

BUSINESS REGISTRATION ACCOUNT ID: _____	PHONE () _____
PRIMARY OWNER NAME AND ADDRESS (IF NOT SAME AS MAILING ADDRESS) NAME _____ ADDRESS _____ CITY _____	(PP11) PHYSICAL LOCATION OF BUSINESS IN WEST VIRGINIA (IF NOT THE SAME AS MAILING ADDRESS) ADDRESS _____ CITY _____
STATE _____ ZIP CODE _____	STATE _____ ZIP CODE _____
PHONE () _____ EXTENSION _____	PHONE () _____ EXTENSION _____

Return is to be filed by all non-utility businesses; incorporated and unincorporated, except Railroad, Telegraph and Express Companies, Telephone Companies, Pipe Line, Car Line Companies and other Public Utility Companies. The Law provides that every incorporated or unincorporated Company, foreign or Domestic liable to taxation shall make a report of his property, in writing, to the Assessor whether called upon by the assessor or not. West Virginia Code Chapter 11, Article 3, Section 12, and Chapter 11, Article 3, Section 15 as amended. **PERSONAL PROPERTY NOT OWNED** - If you have possession, charge or control of any personal property as executor, administrator, guardian, committee, trustee, receiver, bailee, agent, attorney or in any representative or fiduciary capacity, you must file a separate report with the assessor. Banks, Realtors, Property Managers or others in charge of leasing or renting real estate are required to make a complete list of all furniture, fixtures and other personal property and an itemized list of the items.

REPORT OF PROPERTY YOU LEASE FROM OTHERS

This space is provided for the reporting of property "in charge of but not owned by" the entity completing this form (as Agent, Bailee, Lessee or other representative capacity) such as, but not limited to, leased machinery, business or data processing equipment, vending machines, etc. Indicate the name and address of owner, the property leased, the gross annual rent, estimated value. Attach additional sheets if needed.

NAME, ADDRESS AND TELEPHONE NUMBER OF PROPERTY OWNER	TYPE OF PROPERTY	GROSS ANNUAL RENT	ESTIMATED VALUE	ASSESSOR'S USE

REAL ESTATE

List Real Estate situated in this county as required. The value estimate is your opinion of market value as of July 1, this year.

ITEM 1 - DESCRIPTION SHOWN ON SURFACE MINERAL In QUANTITY OWNER'S OWNER'S TOTAL OWNER'S ASSESSOR'S
 LAND BOOKS OR TAX STATEMENTS Only (?) Only (?) FEE (?) IN ACRES VALUE LAND VALUE BLDGS VALUE USE

ITEM 2 - If you have added or deleted buildings (if deleted, identify as such) whereby the value of the real property has been altered by more than \$1,000 since last return, describe the improvement or deletion and the location. Owner's value should reflect both material and labor. If work is in progress on July 1 of this year, then report on Schedule E.

DESCRIPTION OF IMPROVEMENT OR DELETION LOCATION OWNER'S VALUE ASSESSOR'S USE

(PP 13 or PP17)

BUILDINGS ON LEASED LAND

Building permanently fixed or intended for permanent fixture to land which is not owned by entity which owns the building(s). The lease must be a contract which transfers all or part of the right to use of the land, exclusion and disposition from owner to tenant in exchange for a promise to pay rent.

NAME AND ADDRESS OF LAND OWNER OWNER'S VALUE BUILDING ASSESSOR'S USE

Note: Other leasehold improvements, to be reported on SCHEDULE A, are improvements and/or additions exclusive of buildings, to leased property which have been made by the lessee.

SCHEDULE A
(PP13 or PP17)

MACHINERY, EQUIPMENT, FURNITURE AND LEASEHOLD IMPROVEMENTS

Enter all property owned with the acquisition cost by year installed. Begin with the current year and each previous year, as required. Acquisition cost, including the cost of machinery, equipment, furniture and fixtures intended for rent or lease, is defined as 100 percent of the cost new as shown by books and records and is to include freight, installation charges, trade-ins, federal tax allowances and credit. If equipment was purchased in one year and installed in the following year, the full cost is reportable in the year installed. **PROPERTY OWNED AND STILL IN USE BUT WHICH HAS BEEN FULLY DEPRECIATED OR WRITTEN OFF BUT STILL IN POSSESSION BY THE TAXPAYER MUST BE REPORTED.** Machinery and Equipment which has been fully depreciated and is no longer in use as part of a production process should be reported in "Schedule F." Property which is intended for rent or lease must be reported at 100 percent of acquisition cost regardless of period of rent. IF LEASEHOLD IMPROVEMENTS ARE REPORTED, PLEASE INCLUDE A BRIEF DESCRIPTION OF THE ITEMS TO ASSURE THEY ARE NOT VALUED AS PART OF THE REAL PROPERTY.

YEAR PURCHASED	ACQUISITION COST	MACHINERY & EQUIPMENT		ACQUISITION COST	FURNITURE & FIXTURES	
		OWNER'S VALUE	ASSESSOR'S USE		OWNER'S VALUE	ASSESSOR'S USE

CURRENT YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 19						
PREVIOUS YR. 19						

PREVIOUS YR. 19

PREVIOUS YR. 19

PREVIOUS YR. 19

19__ AND PRIOR

TOTALS

YEAR PURCHASED	LEASEHOLD IMPROVEMENTS			COMPUTER EQUIPMENT		
	ACQUISITION COST	OWNER'S VALUE	ASSESSOR'S USE	ACQUISITION COST	OWNER'S VALUE	ASSESSOR'S USE
CURRENT YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 20						
PREVIOUS YR. 19						
PREVIOUS YR. 19						
PREVIOUS YR. 19						
PREVIOUS YR. 19						
PREVIOUS YR. 19						
19__ AND PRIOR						
TOTALS						

West Virginia Code Chapter 11, Article 6J provides that the value of servers and tangible personal property directly used in a high-technology field of interest advertising business shall be its salvage value. The term "High-technology business" and "Internet advertising business" are defined in West Virginia Code §11-15-9h. In order to be eligible to receive salvage valuation treatment, the primary business activity of the company must be High-technology or Internet advertising. If you have reported equipment on "Schedule A" which you believe to qualify, please enter the dollar value of the property at 100% acquisition cost.

Acquisition Cost: \$ _____ Owner's Value: \$ _____ Assessor's Use: _____

SCHEDULE B INVENTORY, CONSIGNED INVENTORY, PARTS, SUPPLIES
(PP13 or PP17)

Taxpayer is to report all consigned goods, all inventory and merchandise, including parts, for resale; and all supplies and parts held for owner's use, in warehouse or in storage. Dealers of new and used motor vehicles, motorcycles, RV's, trailers, mobile homes and manufactured homes are to complete and attach the Vehicle Dealers Inventory Worksheet in lieu of Schedule B.

DESCRIPTION	ADDRESS OF CONSIGNORS OR FURTHER DESCRIPTION	ACQUISITION COST	OWNER'S VALUE	ASSESSOR'S USE
COST OF INVENTORY AS OF JULY 1				
INVENTORIES CONSIGNED TO YOU				
PARTS HELD FOR OWNER'S USE				
SUPPLIES HELD FOR OWNER'S USE				
TOTALS				

The Warehouse Freeport Tax Amendment of 1986 provided that, "Personal property which is moving in interstate commerce through or over the State of West Virginia, or which was consigned to a warehouse, public or private, within the State from outside the State for storage in transit to a

final destination outside the State, whether specified when transportation begins or afterward, shall be exempt from ad valorem taxation. Provided, that property shall be deprived of such exemption if a new or a different product is created. Personal property of inventories of natural resources shall not be exempt from ad valorem taxation unless required by paramount federal law. Such exemption shall not apply to inventories of natural resources held for the manufacturing and sale of energy." If you have reported assets on "Schedule B" which you believe are exempt under the Freeport Amendment, enter the dollar value of the assets at 100 percent of acquisition cost.

Acquisition Cost \$ _____ Owner's Value \$ _____ Assessor's Use _____

MACHINERY & TOOLS IN PROCESS OF INSTALLATION
(PP13 or PP17)

Machinery or tools purchased but not yet installed are reported here.

DESCRIPTION OF PROPERTY	ACQUISITION COST	OWNER'S VALUE	ASSESSOR'S USE
MACHINERY IN PROCESS OF INSTALLATION OR CONSTRUCTION			
TOOLS IN PROCESS OF INSTALLATION OR CONSTRUCTION			

SCHEDULE D OTHER PERSONAL PROPERTY
(PP13 or PP17)

All other property not reported on other schedules of this return should be listed here. Other personal property may include business libraries, reference books, storage buildings, furniture and fixtures in process, etc. If you need additional space, please attach a list with acquisition date, acquisition cost and owner's value.

DESCRIPTION OF PROPERTY	ACQUISITION DATE	ACQUISITION COST	OWNER'S VALUE	ASSESSOR'S USE
STORAGE BUILDINGS				
FURNITURE & FIXTURES IN PROCESS OF CONSTRUCTION				
OTHER PERSONAL PROPERTY - DESCRIBE				

TOTALS _____

SCHEDULE E VEHICLES (PP16), TRAILERS, BOATS, AIRCRAFT (PP13 or PP17) & MOBILE HOMES (CA12, CA24 & PP13)
(Provide Additional Copies for Each Location)

Property Location: _____
Street Address _____ City _____ Zip Code _____

List only those properties that are licensed in the name of the business as shown on Page 1. Property you are leasing must be reported on Page 1 in section titled Report of Property You Lease from Others. Properties disposed of after July 1 are taxable for the year and must be listed below. If needed, attach additional sheets. If vehicles are assigned to company employees or officers, then provide name and address. Vehicle Identification Numbers can be found on the registration card. List all vehicles such as boats, boat trailers, motorized golf carts, mobile campers, truck mounted campers, motorcycles, motor scooters, utility trailers, recreational vehicles, all terrain vehicles (ATV's), travel trailers, snowmobiles, aircraft, or personal watercraft (jet skis). Include properties used in Interstate Commerce.

TYPE	MAKE	MODEL	YEAR	MOBILE HOME DIMENSIONS OR VEHICLE ID Number	TRUCK GROSS ACQ. VEHICLE WGT	ACQ. DATE	ACQ. COST	OWNER'S VALUE	ASSESSOR'S USE

West Virginia Code Chapter 11, Article 6H provides that the value of special aircraft property shall be its salvage value. Special aircraft property is defined to be "all aircraft owned or leased by commercial airlines or private carriers." Private carrier means "any firm, partnership, joint venture, joint stock company, any public or private corporation, cooperative, trust, business trust or any other group or combination acting as a unit that is engaged in a primary business other than commercial air transportation that operates an aircraft for the transportation of employees or others for business purposes." If you have reported aircraft on "Schedule H" which you believe to be special aircraft property, enter the dollar value of the aircraft at 100 percent of acquisition cost.

Acquisition Cost \$ _____ Owner's Value \$ _____ Assessor's Use _____

SCHEDULE E INCOMPLETE CONSTRUCTION
(PP13 or PP17)

Material costs for these buildings, additions or improvements which are incomplete and hence have not been assessed as real property must be reported here. A rider must be attached to this statement showing the address of such buildings by year of construction.

DESCRIPTION OF PROPERTY	ACQUISITION COST	OWNER'S VALUE	ASSESSOR'S USE
BUILDINGS, ADDITIONS, OR IMPROVEMENTS NOT FINISHED AT MATERIAL COST			

SCHEDULE F
(PP13 or PP17)

SALVAGE VALUE MACHINERY AND EQUIPMENT

This is machinery and equipment which has been fully depreciated and is no longer used as part of a production process. Do not report these items on "Schedule A". If you need additional space, please attach a list with acquisition date, acquisition cost and owner's value.

DESCRIPTION OF PROPERTY	ACQUISITION DATE	ACQUISITION COST	OWNER'S VALUE	ASSESSOR'S USE

POLLUTION CONTROL FACILITIES

(PP13 or PP17)

If required, provide additional copies for each location. List all pollution control facilities installed after July 1, 1973 and approved by either the Office of Water Resources or the Office of Air Quality, both of the Division of Environmental Protection, as a pollution control facility. If the pollution control facility is not on the pre-approved pollution equipment list, a letter from either the Office of Water Resources or the Office of Air Quality, as the case may be, must accompany this form.

LOCATION OF PROPERTY	DESCRIPTION OF PROPERTY	YEAR INSTALLED	ACQUISITION COST	ASSESSOR'S USE

OTHER INFORMATION REQUIRED WITH THIS RETURN

Type of Business Entity (Check One): Corporation Partnership Sole Proprietor Other: _____

Description of Business Activity: _____

Enter Federal Employers Identification Number (FEIN) REQUIRED: _____

Business Registration Account ID: _____

Please insert North American Industry Classification System Code (NAICS), if known: _____

DEPRECIATION SCHEDULE Attached? Yes No (Explain) _____

BALANCE SHEET Attached? Yes No (Explain) _____

In lieu of a balance sheet, a Profit or Loss Statement (Schedule C) from your Federal Income Tax Return may be submitted. Failure to attach these items will be grounds upon which the County Assessor may reject this return. If you need forms or assistance, contact the County Assessor.

I, _____, (president, treasurer, manager, owner or other title) _____

of _____, do affirm that the information on this return, to the best of my knowledge and judgment, is true in all respects; that it contains a statement of all the real estate and personal property, including credits and investments belonging to the business; that the value affixed to such property is, in my opinion, its true and actual value, by which I mean the price at which it would sell if voluntarily offered for sale on such terms as are usually employed in selling such property, and not the price which might be realized at a forced or auction sale; and said business has not, to my knowledge, during the sixty-day period immediately prior to the first day of the assessment year converted any of its assets into nontaxable securities or notes or other evidence of indebtedness for the purpose of evading the assessment of taxes thereon.

Signed _____ Title _____ Date ____/____/____

ASSESSOR'S USE ONLY

Deputy

Date

WEST VIRGINIA AD VALOREM PROPERTY TAXES

Calendar for Assessment and Collection of 2018 Property Taxes

All real and tangible personal property, except exempt tangible personal property and operating property of public service businesses, is assessed annually, as of the first day of July, for ad valorem property taxes levied for the next property tax year, which is the next ensuing calendar year after the July 1st assessment day. The county sheriff mails property tax tickets or statements to property owners beginning July 15th of the property tax year for which the taxes are levied. These taxes are payable in two installments. The first-half installment payment is due September 1st of the property tax year and becomes delinquent if not paid before October 1st of that year.⁸ The second-half installment payment is due March 1st of the next calendar year and becomes delinquent if not paid before April 1st of that year. A 2.5% discount is allowed when property taxes are paid on or before the date they become due. Interest at the rate of 9% per annum applies to taxes paid after they become delinquent.

Operating real and personal property of public service businesses is annually assessed on the first day of January of the year preceding the property tax year by the Board of Public Works for the next property tax year. Taxes levied are collected by the State Auditor and apportioned among the levying bodies in which the operating property is located. Taxes levied may be paid in two installments as described above.

The following illustrates the property tax cycle for property assessed by the county assessor or the Board of Public Works for 2019 property taxes:

January 1, 2018	Public utility property is assessed as of this day for 2019 property taxes.
May 1, 2018	On or before May 1 st each year, public service businesses must file property tax returns with the Board of Public Works, covering their operations during preceding calendar year. On or before May 1 st owners and operators of actively mined coal property or other minerals, except natural gas, oil and managed timber, must file reports with Tax Commissioner.
July 1, 2018	Property is assessed as of this day for 2019 property taxes. Lien for 2019 taxes attaches to real property. (Different rules apply for public utility property.)
August 1, 2018	On or before August 1, 2018, owners of producing and reserve oil and natural gas properties and owners of industrial real and tangible personal property must file property reports with Tax Commissioner.
September 1, 2018	On or before September 1, 2018, corporations and unincorporated businesses, including sole proprietors, must file annual reports with

⁸ First-half taxes on public service businesses become delinquent if not paid before September 1, 2019. Second-half public service business taxes become delinquent March 1, 2020.

county assessor. This includes public service businesses that own non-operating real and tangible personal property.⁹

Unincorporated businesses and sole proprietors engaged in the business of agriculture are not required to file the report required by W. Va. Code § 11-3-15. Corporations engaged in the business of agriculture are required to file the report required by W. Va. Code §11-3-12, which is due September 1st.

Individuals who receive a property tax report form from the county assessor must complete the form and return it to the assessor on or before September 1 of the assessment year.

- | | |
|--------------------|--|
| September 15, 2018 | The Tax Commissioner must furnish to the Board of Public Works tentative assessed values of the operating property of each public service business, on or before September 15, 2018. |
| October 1, 2018 | Board of Public Works begins meeting on or before October 1 st to fix the assessed value of the real and personal operating property of each public service business. |
| October 15, 2018 | By October 15 th , the Tax Commissioner must issue notices of tentative appraised values to owners of industrial property and to owners of natural resource real property, except for owners of oil, natural gas or managed timberland property. |
| November 15, 2018 | On or before November 15th, owners of industrial tangible property and owners of natural resource real property, except for oil, natural gas and managed timber land, may seek informal review of the tentative appraised values by filing a petition for informal review with the Commissioner and serving a copy on county assessor. County assessors may also seek informal review of these tentative appraised values. |
| December 1, 2018 | Tax Commissioner must complete appraisals of oil, natural gas and managed timberland properties by December 1, 2018. |
| December 15, 2018 | Tax Commissioner must finalize appraised values of property appraised by his office and furnish values to county assessors. |
| December 31, 2018 | Lien for 2019 property taxes attaches to operating property of public service businesses. |
| January 15, 2019 | By this date, county assessors must mail notices of increases in assessed values to real property owners, when the increase in assessed value exceeds \$1,000 or is greater than 10% of last year's assessed value, whichever amount is greater. This notice is not |

⁹ *Ibid.*

required when there is a general increase in the tax district and notice is given by publication.

By this date, county assessors must mail notice of increases in the assessed value of a business's tangible personal property to property owners, when the aggregate increase is 10% greater or the increase is more than \$100,000, whichever is greater.

By this date, the Tax Commissioner must complete his review of the petitions for informal review filed with his office by owners of industrial property and by owners of natural resource real property, and notify the owner and the county assessor of any changes.

- | | |
|-------------------|--|
| January 20, 2019 | Within 5 days of receiving notice from the assessor of an increased in the assessed value of real property or business tangible personal property, the owner may file a petition for informal review with the county assessor. Generally, if notice is mailed January 15 th , the 5 th day will likely be January 20 th . After the petition is filed, the assessor's office may meet with the owner and must meet if owner requests a meeting. |
| January 30, 2019 | County assessors must complete land and personal property tax books and deliver them to the county commission, which begins meeting as a board of equalization and review on or before February 1, 2019. |
| February 1, 2019 | County commissions must begin meeting as boards of equalization and review by February 1 st each year. |
| February 10, 2019 | When a petition for informal review is filed, the assessor must rule on the petition by February 10, 2019. |
| February 16, 2019 | Boards of equalization and review may adjourn <i>sine die</i> if they have completed their work any time after February 15th. |
| February 20, 2019 | Last day to notify boards of equalization and review of owner's decision to protest. If board has adjourned <i>sine die</i> , the notice of protest is filed with county clerk. (In this case, the hearing is held in October of the tax year.) |
| | While the board of equalization and review is still in session, a property owner desiring to protest the assessed value may notify the board that the owner elects to have the matter heard by the county commission sitting as a board of assessment appeals in October of the tax year. If the board has already adjourned <i>sine die</i> , the protest and election may be filed with the county clerk by February 20, 2019. |
| February 28, 2019 | Boards of equalization and review must complete their work and adjourn <i>sine die</i> by the last day of February. |

February 28, 2019 is the last day for Tax Commissioner to issue taxability and classification rulings under W. Va. Code § 11-3-24a. An adverse ruling of Tax Commissioner may be appealed to circuit court within 30 days after receipt of the written ruling. Either county assessor or the taxpayer may appeal.

March 3, 2019 County assessors must provide levying bodies and State Department of Education with the aggregate assessed value of all real and personal property in each class of property for tax year 2019.

March 7, 2019 Local levying bodies begin meeting to set their budgets for the next fiscal year. Work must be completed by March 28, 2019.

April 15, 2019 County commissions, county boards of education and municipal governing bodies meet on the third Tuesday in April to set property tax levy rates for the current property tax year. The levy rates are then certified to the county assessor and to the State Auditor. However, the regular levy rate of boards of education is actually set by the West Virginia Legislature.

State Board of Public Works meets to fix State levy on taxable real and personal property and certifies same to each county assessor.

As soon as possible after the assessment of public service business property is completed, and the levy rates are certified to the State Auditor, the Auditor mails to each operator of a public service business a statement of all taxes and levies assessed.

June 7, 2019 After the levy rates are certified to the county assessor, the assessor applies the appropriate levy rates to the assessed values of property entered in the land and personal property books for current property tax year. The completed land and personal property books must be delivered to the county sheriff by June 7, 2019.

July 15, 2019 County sheriff begins collecting 2019 property taxes by mailing property tax tickets or statements to owners of property listed in the land and personal property books for the current property tax year.

September 1, 2019 First-half installment payments of 2019 property taxes are due September 1st.

A 2.5% discount is allowed if first-half 2019 property taxes, or taxes for the full year, are paid on or before September 1st to the county sheriff, or to the State Auditor in the case of property assessed by the Board of Public Works.

For public service businesses, the first-half installment payment of 2019 property taxes is delinquent if not paid by September 1, 2018.

- October 1, 2019 First-half installment payments of 2019 property taxes not paid by the end of September become delinquent on October 1, 2019, for all other taxpayers.
- (For public service businesses, first-half 2019 property taxes are delinquent if not paid by September 1, 2019.)
- Board of Assessment Appeals begins meeting to hear protest of property owners that elected to have their protest heard in October. Board must finish its work by end of October unless the board agrees to extend the time for completion of its work.
- March 1, 2020 Second-half installment payments of 2019 property taxes are due March 1, 2020.
- A 2.5% discount is allowed if second-half 2019 property taxes are paid on or before March 1st to the county sheriff, or to the State Auditor, in the case of property assessed by Board of Public Works.
- For public service businesses, the second-half installment payment of 2018 property taxes is delinquent if not paid by March 1, 2020.
- April 1, 2020 Second-half installment payments of 2019 property taxes not paid by the end of March become delinquent on April 1, 2020 for all other taxpayers.
- (For public service businesses, second-half 2019 property taxes are delinquent if not paid by March 1, 2020.)
- April 2020 Sheriff prepares and publishes a notice stating in effect that unpaid property taxes assessed for the 2019 property tax year (calendar year) have become delinquent and that unless paid by April 30, 2020, will be included for publication as provided in W. Va. Code §11A-2-10a. (Delinquent taxes of public service business are collected by the State Auditor.)
- May 1, 2020 On or before May 1st, the sheriff prepares a list of delinquent property taxes, on both real and personal property, for the preceding property tax year (calendar year), as provided in W. Va. Code §11A-2-11.
- List must be posted on the front door of the courthouse and published as a Class 1-O legal advertisement at least two weeks before the meeting of the county commission at which the list is presented for examination. W. Va. Code §11-2A-13.
- June 15, 2020 On or before June 15, 2019, the sheriff must present the list of 2019 delinquent property taxes to the county commission for examination. After review by the county commission, the sheriff may begin using remedies provided in the West Virginia Code to collect delinquent personal property taxes from those who owe the tax. W. Va. Code §11-2A-14.

July 1, 2020

On or before July 1st, the list of 2019 delinquent real property taxes must be certified to the State Auditor as provided in W. Va. Code §11A-2-15.

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