

HB 2590

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997



ENROLLED

HOUSE BILL No. 2590

(By Delegate _____
Mr. Speaker, Mr. Kiss,
and Delegate Faircloth)



Passed _____ April 12, _____ 1997

In Effect _____ From _____ Passage

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SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

H. B. 2590

(BY MR. SPEAKER, MR. KISS, AND DELEGATE FAIRCLOTH)

[Passed April 12, 1997; in effect from passage.]

AN ACT to amend article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto two new sections, designated sections one-a and one-b; to amend and reenact sections twelve, fourteen, and fourteen-a, article three of said chapter; to further amend said article by adding thereto a new section, designated seven-a; to amend and reenact section three, article four of said chapter; and to amend and reenact section three, article five of said chapter, all relating generally to ad valorem property taxes; phasing out tax on intangibles over five year period beginning with tax year one thousand nine hundred ninety-eight; defining chattel interests in real property to be real property for tax purposes; defining chattel interests in tangible personal property to be tangible personal property for tax purposes; providing for tangible personal property of banks and savings and loans associations to be taxed beginning with tax year one thousand nine hundred ninety-eight; allowing banks and savings and loan associations an adjustment to value of shares for value of tangible personal property; and providing for banks and savings and loans to be taxed like other businesses beginning tax year one thousand nine hundred ninety-eight.

Be it enacted by the Legislature of West Virginia:

That article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto two new sections, designated sections one-a and one-b; that sections twelve, fourteen, and fourteen-a, article three of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section seven-a; that section three, article four of said chapter, be amended and reenacted; and that section three, article five of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-1a. Further legislative findings and declarations; effect of declarations and clarification of chattel interests in real or tangible personal property.

1 (a) The Legislature hereby finds that:

2 (1) The voters of this state, in the general election
3 held in the year one thousand nine hundred eighty-four,
4 ratified amendment five to the constitution of West
5 Virginia which essentially provides that once the first
6 statewide reappraisal of property pursuant to section one-
7 b, article ten of the constitution is implemented and first
8 employed to fix values for ad valorem property tax
9 purposes, no intangible personal property shall be subject
10 to ad valorem property taxation except as provided by
11 general law enacted after ratification of amendment five;

12 (2) In ratifying amendment five, the voters intended
13 for intangible personal property to become exempt from
14 ad valorem property tax at some point after ratification,
15 except as provided in general legislation enacted
16 subsequent to ratification of amendment five;

17 (3) Due to numerous problems, actual or perceived,
18 with the results of the first statewide reappraisal under
19 section one-b, article ten of the constitution, and the
20 public's lack of confidence in those results, the first
21 statewide reappraisal was never implemented and results
22 were never employed to fix values for ad valorem
23 property tax purposes;

24 (4) The Legislature responded to these problems,

25 actual or perceived, by enacting this article which, as its
26 primary purpose, resulted in the making of the second
27 statewide reappraisal of property for ad valorem property
28 tax purposes, which now results in all property being
29 assessed and taxed at sixty percent of its market value,
30 except as otherwise provided by general law; and

31 (5) The intent and objective of the voters in causing
32 the first statewide reappraisal to be made under section
33 one-b, article ten of the constitution, has now been
34 achieved, although not in the manner originally intended
35 by the voters when they ratified amendment five, and that
36 the will and objective of the people in ratifying
37 amendment five will unintentionally be circumvented
38 unless the Legislature acts to prevent such a result.

39 (b) The Legislature, therefore, does hereby declare
40 that:

41 (1) It has the power and authority under the
42 constitution and these circumstances to implement
43 amendment five;

44 (2) The provisions of amendment five shall be
45 implemented beginning tax year one thousand nine
46 hundred ninety eight and thereafter, notwithstanding any
47 other provision in this article other than section one-b;

48 (3) Chattel interests in real or tangible personal
49 property are tangible property for ad valorem property
50 tax purposes, which shall be assessed and taxed in the levy
51 classification in which the underlying real or tangible
52 personal property is taxed for ad valorem property tax
53 purposes, notwithstanding any other provision in this
54 chapter; and

55 (4) The property of banks and savings and loans
56 shall be assessed and taxed like that of other corporations
57 beginning tax year one thousand nine hundred ninety
58 eight.

§11-1C-1b. Phase-out of taxation of intangible personal property.

1 Notwithstanding anything in this code to the

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2 contrary, intangible personal property with tax situs in this
3 state that would have been taxable prior to the effective
4 date of this act shall be exempt from ad valorem property
5 tax beginning tax year one thousand ^{NINE HUNDRED} ninety-eight:
6 *Provided*, That such property shall be subject to ad
7 valorem property tax and taxed at fifty percent of assessed
8 value for tax year one thousand nine hundred ninety
9 eight; at forty percent of assessed value for the tax year
10 ^{ONE THOUSAND} nine hundred ninety-nine; at thirty percent of assessed
11 value for the tax year two thousand; at twenty percent of
12 the assessed value for the tax year two thousand one; at ten
13 percent of the assessed value for the tax year two thousand
14 two and eliminated completely for the tax year two
15 thousand three and thereafter.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-7a. Chattel interests in real and tangible personal property.

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1 For ad valorem property tax purposes, chattel
2 interests in real property and chattel interest in tangible
3 personal property are hereby defined to be an interest in
4 real or tangible personal property and are to ^{BE} assessed and
5 taxed like real or tangible personal property is taxed. As
6 so defined, chattel interest in real property and chattel
7 interests in tangible personal property are not intangible
8 personal property for property tax purposes.

§11-3-12. Assessment of corporate property; reports to assessors by corporations.

1 (a) Each incorporated company, banking institution,
2 and national banking association, foreign or domestic,
3 having its principal office or chief place of business in this
4 state, owning property subject to taxation in this state,
5 except railroad, telegraph and express companies,
6 telephone companies, pipeline, car line companies and
7 other public utility companies, shall annually, between the
8 first day of the assessment year and the first day of
9 October, make a written report, verified by the oath of the
10 president or chief accounting officer, to the assessor of the
11 county in which its principal office or chief place of
12 business is situated or in which such property subject to

13 taxation in this state is located if such corporation does not
14 have a principal office or chief place of business in this
15 state, showing the following items, viz: (1) the amount of
16 capital authorized to be employed by it; (2) the amount of
17 cash capital paid on each share of stock; (3) the amount
18 of credits and investments other than its own capital stock
19 held by it on said date, with their fair market value; (4) the
20 quantity, location and fair market value of all of its real
21 estate, and tax district or districts in which it is located; and
22 (5) the kinds, quantity and fair market value of all its
23 tangible property in each tax district in which it is located.

24 (b) The oath required for this section shall be
25 substantially as follows, viz:

26 State of West Virginia, County, ss:

27 I,, president (treasurer or manager) of
28 (here insert name of corporation), do solemnly swear (or
29 affirm) that the foregoing is, to the best of my knowledge
30 and judgement, true in all respects; that it contains a
31 statement of all the real estate and personal property,
32 including credits and investments belonging to said
33 corporation; that the value affixed to such property is, in
34 my opinion, its value, by which I mean the price at which
35 it would sell if voluntarily offered for sale on such terms
36 as are usually employed in selling such property, and not
37 the price which might be realized at a forced or auction
38 sale; and said corporation has not, to my knowledge,
39 during the sixty day period immediately prior to the first
40 day of the assessment year converted any of its assets into
41 nontaxable securities or notes or other evidence of
42 indebtedness for the purposes of evading the assessment
43 of taxes thereon; so help me, God.

44

45 The officer administering such oath shall append
46 thereto the following certificate, viz:

47 Subscribed and sworn to before me by this
48 the day of, 19.....

49 (c) The amendments to this section enacted in the
50 year one thousand nine hundred ninety-seven shall be

51 effective beginning tax year one thousand nine hundred
52 ninety-eight and thereafter.

**§11-3-14. Assessment of stock, realty and tangible personal
property of banks.**

1 (a) Shares of stock in a banking institution, national
2 banking association or industrial loan company shall be
3 assessed at their true and actual value, according to the
4 rules prescribed in this chapter, to the several holders of
5 such stock in the county, district and town where such
6 bank, company or association is located, and not
7 elsewhere, whether such holders reside there or not. The
8 real and actual value of such shares shall be ascertained
9 according to the best information which the assessor may
10 be able to obtain, whether from any return made by such
11 bank, company or association to any officer of the State
12 or the United States, from actual sales of the stock, from
13 answers to questions by the assessor, as hereinafter
14 provided, or from other trustworthy sources. The cashier,
15 secretary or principal accounting officer of every such
16 bank, company or association shall cause to be kept a
17 correct list of the names and residences of all the
18 shareholders therein, and number of shares held by each,
19 which list shall be open to the inspection of the assessors
20 of the county, and of the tax commissioner or assistants;
21 and such cashier, secretary or officer shall answer under
22 oath such questions as the assessor may ask him
23 concerning the matters shown by such list, and concerning
24 the value of such shares, and shall be subject to the same
25 penalties, for failure to do so, which are imposed by law
26 upon individuals failing to answer questions which the
27 assessor is authorized to ask. The taxes so assessed upon
28 the shares of any such bank, company, or association shall
29 be paid by the cashier, secretary or proper accounting
30 officer thereof, and in the same manner and at the same
31 time as other taxes are required to be paid in such county,
32 district and town. In default of such payment such
33 cashier, secretary or accounting officer as well as such
34 bank, company or association shall be liable for such
35 taxes, and in addition, for a sum equal to ten percent
36 thereof. Any taxes so paid upon any such share may, with
37 interest thereon, be recovered from the owners thereof by

38 the bank, company, association or officer paying them, or
39 may be deducted from the dividends accruing on such
40 shares. The real estate of any such bank, company or
41 association shall be assessed as in other cases, and a
42 proportionate share of such assessed value shall be
43 deducted in ascertaining the market value of the shares.
44 The tangible personal property of any such bank,
45 company, or association shall be assessed as in other cases
46 and a proportional share of such assessed value shall be
47 deducted in ascertaining the market value of the shares for
48 tax years as follows: Such deduction shall be sixteen and
49 sixty-six one hundredth percent of the assessed value of
50 the tangible personal property for the tax year one
51 thousand nine hundred ninety-eight; thirty-three and
52 thirty-two one hundredth percent of the assessed value of
53 the tangible personal property for the tax year one
54 thousand nine hundred ninety-nine; and forty-nine and
55 ninety-eight hundredth percent of the assessed value of
56 the tangible personal property for the tax year two
57 thousand; sixty-six and sixty-four hundredths of the
58 assessed value of the tangible personal property for the tax
59 year two thousand one; eighty-three and twenty one
60 hundredth for the tax year two thousand two with such
61 personal property tax deduction being eliminated entirely
62 for the tax year two thousand three and thereafter. And if
63 such tangible personal property or if the title to the
64 building in which any such bank, company or association
65 does its business and the land on which such building
66 stands is held by separate corporation in which such bank,
67 company or association alone or together with another
68 such bank or banks, company or companies, association
69 or associations owns stock, and such tangible personal
70 property or building and land be assessed to such separate
71 corporation, a proportionate share of the assessed value of
72 such tangible personal property or real estate of such
73 separate company shall be deducted in ascertaining the
74 market value of the shares of such bank, company or
75 association. The return shall be made as of the first day of
76 the assessment year.

77 (b) This section shall become inoperative beginning
78 tax year two thousand three and thereafter.

§11-3-14a. Taxation of building and loan associations and federal savings and loan associations.

1 (a) The capital of every building and loan association
2 and federal savings and loan association shall include all
3 of its assets and shall be assessed at its true and actual
4 value according to the rules prescribed by this chapter, to
5 such building and loan association or federal savings and
6 loan association in the county, district and town where
7 such association is located: *Provided*, That investment
8 shares and investment share accounts in such associations
9 representing money withdrawable therefrom are hereby
10 defined as money for purposes of taxation under this
11 section and, as such, shall not be taxed but shall be
12 deducted by the assessor in determining the true and
13 actual value of the capital of any such association. The
14 real and actual value of such capital shall be ascertained
15 according to the best information which the assessor may
16 be able to obtain, whether from any return made by such
17 association to any officer of this State, or the United States,
18 or from answers to questions by the assessor, as hereinafter
19 provided, or from other trustworthy sources.

20 The secretary or principal accounting officer of
21 every such building and loan association and federal
22 savings and loan association shall cause to be kept a
23 complete accounting record, including a complete record
24 of all such investment shares and investment share
25 accounts, which shall be open to the inspection of the
26 assessors of the counties, and the tax commissioner or his
27 assistants, and such secretary or officer shall answer under
28 oath such questions as the assessor may ask him
29 concerning the matters shown by such records and
30 accounts, and shall be subject to the same penalties for
31 failure to do so, which are imposed by law upon
32 individuals failing to answer questions which the assessor
33 is authorized to ask. The tax levied and assessed upon the
34 capital of every such building and loan association and
35 federal savings and loan association, shall be paid by such
36 association in the manner and at the same time as other
37 taxes are required to be paid in such county, district and
38 town.

39 The real estate of any such building and loan
40 association or federal savings and loan association shall be
41 assessed as in other cases, and a proportionate share of
42 such assessed value shall be deducted in ascertaining the
43 value of such capital. The tangible personal property of
44 any such building and loan association or federal and
45 savings loan association shall be assessed as in other cases
46 and a proportional share of such assessed value shall be
47 deducted in ascertaining the value of the capital for tax
48 years as follows: Such deduction shall be sixteen and
49 sixty-six one hundredth percent of the assessed value of
50 the tangible personal property for the tax year one
51 thousand nine hundred ninety-eight; thirty-three and
52 thirty-two one hundredth percent of the assessed value of
53 the tangible personal property for the tax year one
54 thousand nine hundred ninety-nine; and forty-nine and
55 ninety-eight hundredth percent of the assessed value of
56 the tangible personal property for the tax year two
57 thousand; sixty-six and sixty-four hundredths of the
58 assessed value of the tangible personal property for the tax
59 year two thousand one; eighty-three and twenty one
60 hundredth for the tax year two thousand two with such
61 personal property tax deduction being eliminated entirely
62 for the tax year two thousand three and thereafter. If the
63 title to the building in which any such association does its
64 business and the land on which such building stands is
65 held by a separate corporation, in which any such
66 association alone or together with another such association
67 or banking company or companies own stock, and such
68 building and land be assessed in such separate
69 corporation, a proportionate share of the assessed value of
70 such real estate of such separate company shall be
71 deducted in ascertaining the value of the capital of such
72 association. Every such association shall make a return to
73 the assessor as of the first day of the assessment year.

74 (b) This section shall become inoperative beginning
75 tax year two thousand three and thereafter.

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-3. Definitions.

1 For the purpose of giving effect to the "Tax
2 Limitations Amendment", this chapter shall be interpreted
3 in accordance with the following definitions, unless the

4 context clearly requires a different meaning:

5 “Owner” means the person, as defined in section ten,
6 article two, chapter two of this code, who is possessed of
7 the freehold, whether in fee or for life. A person seized or
8 entitled in fee subject to a mortgage or deed of trust
9 securing a debt or liability is considered the owner until
10 the mortgagee or trustee takes possession, after which the
11 mortgagee or trustee shall be considered the owner. A
12 person who has an equitable estate of freehold, or is a
13 purchaser of a freehold estate who is in possession before
14 transfer of legal title is also considered the owner.

15 “Used and occupied by the owner thereof
16 exclusively for residential purpose” means actual
17 habitation by the owner of all or a portion of a parcel of
18 real property as a place of abode to the exclusion of any
19 commercial use: *Provided*, That if the parcel of real
20 property was unoccupied at the time of assessment and
21 either (a) was used and occupied by the owner thereof
22 exclusively for residential purposes on the first day of July
23 of the previous year or (b) was unimproved on the first of
24 July of the previous year but a building improvement for
25 residential purposes was subsequently constructed thereon
26 between that date and the time of assessment, the property
27 shall be considered “used and occupied by the owner
28 thereof exclusively for residential purpose”: *Provided*,
29 *however*, That nothing herein contained shall permit an
30 unoccupied or unimproved property to be considered
31 “used and occupied by the owner thereof exclusively for
32 residential purposes” for more than one year. If a license
33 is required for an activity on the premises or if an activity
34 is conducted thereon which involves the use of equipment
35 of a character not commonly employed solely for
36 domestic as distinguished from commercial purposes, the
37 use may not be considered to be exclusively residential.

38 “Farm” means a tract or contiguous tracts of land
39 used for agriculture, horticulture or grazing and includes
40 all real property designated as “wetlands” by the United
41 States army corps of engineers or the United States fish
42 and wildlife service.

43 “Occupied and cultivated” means subjected as a unit
44 to farm purposes, whether used for habitation or not, and
45 although parts may be lying fallow, in timber or in

46 wastelands.

ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.

§11-5-3. Definitions.

1 The words “personal property,” as used in this
2 chapter includes all fixtures attached to land, if not
3 included in the valuation of such land entered in the
4 proper land book; all things of value, moveable and
5 tangible, which are the subjects of ownership; all chattels
6 personal; all notes, bonds, and accounts receivable, stocks
7 and all other intangible property.

8 “Agriculture” means the cultivation of the soil,
9 including the planting and harvesting of crops and the
10 breeding and management of livestock.

11 “Horticulture” means plant production of every
12 character except forestry.

13 “Grazing” means the use of land for pasturage.

14 “Products of agriculture” means those things the
15 existence of which follows directly from the activity of
16 agriculture, horticulture or grazing, including dairy,
17 poultry, bee and any other similar products, whether in
18 the natural form or processed as an incident to the
19 marketing of the raw material.

20 “Producer” means the person who is actually
21 engaged in the agriculture, horticulture and grazing which
22 gives existence and fruition to products of agriculture as
23 distinguished from the broker or middleman.

24 “Tax year” means the calendar year following the
25 July first assessment day or, in the case of a public service
26 business assessed pursuant to article six of this chapter, the
27 calendar year beginning on the January first assessment
28 day.

29 “While owned by the producer: means while title is in
30 the producer as above defined.

31 “Employed exclusively” means that the prepon-
32 derant, and the sole gainful use is for the designated
33 purpose.”

Enr. Com. Sub. for H. B. 2590] 12

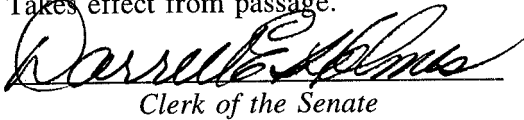
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

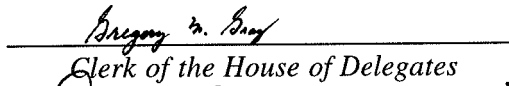

Chairman Senate Committee

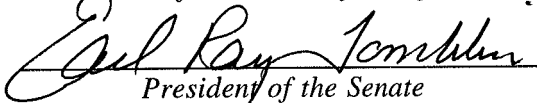

Chairman House Committee

Originating in the House.

Takes effect from passage.

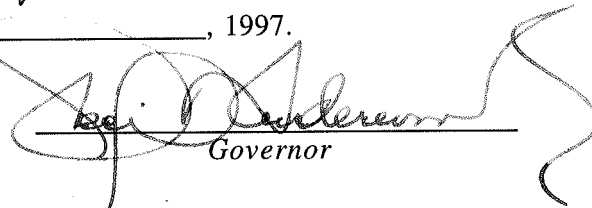

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 7th
day of May, 1997.


Governor

PRESENTED TO THE
GOVERNOR

Date 4/29/97
Time 2:57pm