

JOINT SELECT COMMITTEE ON TAX REFORM

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West Virginia Ad Valorem Property Tax

Valuation Issues – Residential, Commercial and Industrial Property

Dale W. Steager, Esquire
Spilman Thomas & Battle, PLLC
300 Kanawha Boulevard, East
Charleston, WV 25301
Telephone: 304.340.1692
Email: dsteager@spilmanlaw.com

A. What does the Constitution Say about Value?

1. Value is to be ascertained as directed by law.

“Subject to the exceptions in this section contained, **taxation shall be equal and uniform throughout the state**, and all property, both real and personal, shall **be taxed in proportion to its value to be ascertained as directed by law**. No one species of property from which a tax may be collected shall be taxed higher than any other species of property of equal value[.]” Article X, § 1 of the State Constitution (emphasis added)..

2. All property is to be assessed at 60% of its value.

“[A]ll property subject to ad valorem taxation shall be assessed at **sixty percent of its value**, as directed to be ascertained in this section, except that the Legislature may from time to time, by general law agreed to by two thirds of the members elected to each house, establish a higher percentage for the purposes of this paragraph, which percentage shall be uniform as to all classes of property defined in section one of this article, but not more than one hundred percent of such value.” Article X, § 1b, Subsection A of the State Constitution (emphasis added).

a. The terms “value,” “market value,” “fair market value,” “true and actual value” and “appraised value” have the same meaning.

(1) “Value ,” “market value ” and “true and actual value ” shall have the same meaning and shall mean the price at or for which a particular parcel or species of property would sell if it were sold to a willing buyer by a willing seller in an arms-length transaction without either the buyer or the seller being under any compulsion to buy or sell: *Provided*, That in

determining value , primary consideration shall be given to the trends of price paid for like or similar property in the area or locality wherein such property is situate over a period of not less than three nor more than eight years next preceding the base year and in the case of a farm or farms shall be determined assuming such land is being used for farming purposes. In addition, the commissioner may, for purposes of appraisal of any tract or parcel of real property, or chattels, real or other species of property, real or personal, take into account one or more of the following factors: (1) The 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 properties; (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 within the next preceding eight years; (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 preceding eight years; and (10) any commonly accepted method of ascertaining the market value of any such property, including techniques and method peculiar to any particular species of property if such technique or method is used uniformly and applied to all property of like species.” W. Va. Code § 11-1A-3(i).

(2) “True and actual value” means “the price for which the property would sell if voluntarily offered for sale by the owner thereof, upon the terms as the property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if the property were sold at a forced sale.” W. Va. Code § 11-3-1(a).

(3) “Fair market value” means “the highest price in terms of money that a property will bring in a competitive and open market, assuming that the buyer and seller are acting prudently and knowledgeably, allowing sufficient time for the sale and assuming that the price is not affected by undue stimulations.” W. Va. Code § 110-1P-2.7.

3. Laws providing for the determination of value must provide for consideration of:

- a. Trends in market values over a fixed period of years prior to the base year [of the periodic statewide reappraisal];
- b. The location of the property, and
- c. Such other factor and methods as may be determined by the Legislature.

“The Legislature shall provide by general law for periodic statewide reappraisal of all property, which reappraisal shall be related for all property to a specified base year which, as to each such reappraisal, shall be uniform for each appraisal for all classes of property and all counties. **In such law, the Legislature shall provide for consideration of (1) trends in market values over a fixed period of years prior to the base year, (2) the location of the property, and (3) such other factors and methods as it**

may determine: *Provided*, That with respect to reappraisal of all property upon the base year of one thousand nine hundred eighty, such reappraisals are deemed to be valid and in compliance with this section: *Provided, however*, That with respect to farm property, as defined from time to time by the Legislature by general law, the determination of value shall be according to its fair and reasonable value for farming purposes, as may be defined by general law.” Article X, § 1b, Subsection B of the State Constitution (emphasis added).

4. The definition of “value” in W. Va. Code § 11-1A-3(i) provides that in determining value, primary consideration shall be given to the trends of price paid for like or similar property in the area or locality wherein such property is situate over a period of not less than three nor more than eight years next preceding the base year and in the case of a farm or farms shall be determined assuming such land is being used for farming purposes. In addition, the commissioner may, for purposes of appraisement of any tract or parcel of real property, or chattels, real or other species of property, real or personal, take into account one or more of the following factors:

- (1) The 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 properties;
- (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 within the next preceding eight years;
- (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 preceding eight years; and
- (10) any commonly accepted method of ascertaining the market value of any such property, including techniques and method peculiar to any particular species of property if such technique or method is used uniformly and applied to all property of like species.” W. Va. Code § 11-1A-3(i).

The Tax Commissioner’s legislative rules for valuing property may go into greater detail regarding factors to be considered in valuing property. For example, the legislative rule for determining the *Appraisal of Valuation of Commercial and Industrial Real Property*, W. Va. Code §110-1P-3, provides:

3.1.1. The market value of commercial and industrial real property is the price at or for which the property would sell if it was sold to a willing buyer by a willing seller 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 shall be given to the trends of price paid for like or similar property in the area or locality in which the 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 shall consider the following factors:

- 3.1.1.1. The location of the property;
- 3.1.1.2. Its site characteristics;
- 3.1.1.3. The ease of alienation, considering the state of its title, the number of owners, and the extent to which the property may be the subject of either dominant or servient easements;
- 3.1.1.4. The quantity of size of the property and the impact which its sale may have upon surrounding properties;
- 3.1.1.5. If purchased within the previous eight years, its purchase price and the date of each purchase;
- 3.1.1.6. The recent sale of, or other transactions involving, comparable property;
- 3.1.1.7. The value of the property to its owner;
- 3.1.1.8. The condition of the property;
- 3.1.1.9. The income, if any, which the property actually produces and has produced within the preceding three (3) years; and
- 3.1.1.10. Any commonly accepted method of ascertaining the market value of the property, including techniques and methods peculiar to any particular species of property if the technique or method is used uniformly and applied to all property of like species.

3.1.2. There are two (2) types of improvements which are considered in the appraisal process; these are improvements to the land and improvements on the land.

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

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

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

- 3.1.3.1. Location;
- 3.1.3.2. Size;
- 3.1.3.3. Shape;

- 3.1.3.4. Topography;
- 3.1.3.5. Accessibility;
- 3.1.3.6. Present use;
- 3.1.3.7. Highest and best use;
- 3.1.3.8. Easements;
- 3.1.3.9. Zoning;
- 3.1.3.10. Availability of utilities;
- 3.1.3.11. Income imputed to the land; and
- 3.1.3.12. Supply and demand for land of a particular type.

3.1.4. Each of these factors should be considered in the appraisal of a specific parcel. Some factors, however, may be given more weight than others.

5. Farm Property and Managed Timberland. The Constitution provides for farm property and managed timberland to be treated differently.

a. Farm property is to be valued according to its fair and reasonable value for farming purposes.

“[W]ith respect to farm property, as defined from time to time by the Legislature by general law, the determination of value shall be according to its **fair and reasonable value for farming purposes**, as may be defined by general law.” Article X, § 1b, Subsection B of the State Constitution (emphasis added).

b. Managed timberland may be exempted from all taxation.

The Legislature may by general law define and classify forest lands and provide for cooperation by contract between the state and the owner in the planting, cultivation, protection, and harvesting thereof. Forest lands embraced in any such contract **may be exempted from all taxation** or be **taxed in such manner**, including the imposition of a severance tax or charge as trees are harvested, **as the Legislature may from time to time provide**. But any tax measured by valuation shall not exceed the aggregate rates authorized by section one of article ten of this constitution.” W. Va. Const. Article VI, § 53.

6. Implicit in Article X, § 1 is that assessed values be equalized throughout the state.

“Equalization” is defined by the International Association of Assessing Officers as “the process by which an appropriate governmental body attempts to ensure that all property under its jurisdiction is assessed at the same assessment ratio or at the ratio or ratios required by law. Equalization may be undertaken at many different levels. Equalization among use classes

(such as agricultural and industrial property) may be undertaken at the local level, as may equalization among properties in a school district and a transportation district; equalization among counties is usually undertaken by the state to ensure that its aid payments are distributed fairly.” *Glossary for Property Appraisal and Assessment*, International Association of Assessing Officers at page 60 (2nd edition 2013).

a. County Commissions sitting as boards of equalization and review in February of each year are charged with equalizing the assessments made by the county assessor. W. Va. Code § 11-3-24(a).

“The county commission shall annually, not later than February 1 of the tax year, meet as a board of equalization and review for the purpose of reviewing and equalizing the assessment made by the assessor. W. Va. Code § 11-3-24(a).

b. County assessors determine the assessed value of all property in his or her county except for operating property of public service businesses. That property is assessed by the Board of Public Works. Moreover, operating property of public service businesses is not entered in the assessor’s property books.

c. While boards of equalization and review are charged with certifying that the assessed values of property in their respective counties determined by the county assessor are equalized. Neither the West Virginia Code, legislative rules promulgated by the Tax Commission, nor any other document available to the public provides guidance to boards of equalization and review on how to determine whether assessed values in their respective counties are equalized.

“The county commission shall annually, not later than February 1 of the tax year, meet as a board of equalization and review for the purpose of reviewing and **equalizing the assessment made by the assessor.** W. Va. Code § 11-3-24(a). Emphasis added.)

“After the board completes the review **and equalization of the property** books, a majority of the board shall sign a statement that it is the completed assessment of the county for the tax year.” W. Va. Code § 11-3-24(i). (Emphasis added.)

d. Moreover, there is no statewide equalization of assessed values as contemplated in Article X, § 1 of the Constitution before or after the tax bill are mailed (taxation shall be equal and uniform throughout the state).

(1) **Real property sales ratio studies.** Annually, the Tax Commissioner makes an assessment ratio study that compares the assessed values of all species of real property (except public utility real property) as of the first day of July of the assessment year with sales of real property in the State during the 12 months preceding the July 1st assessment date.

The sales ratio study for the 2014 tax year was completed in December of 2014. The study compares the assessed value of real property as of July 1, 2013, with sales of real property during the period July 1, 2012 and ending June 30, 2013. "Any sales that were more than plus or minus two standard deviations from the median in a county may have been eliminated from the county's ratio calculation." Preface of West Virginia Assessment Ratio Study Tax Year 2014 at page III. The sales used in this study are sales verified by the county assessor. *West Virginia Assessment Ratio Study Tax Year 2014* at page 7.

(3) No equalization study is made of personal property assessed values.

(4) No equalization study is made of public utility assessed values.

(5) No equalization study is made of all taxable property in the State.

e. To the extent equalizations studies are made and it is determined that property is not equally and uniformly assessed throughout the State, there is no mechanism by which to attain statewide equalization of assessed values for the tax year for which the study is made.

B. Methods of Valuation

1. There are three generally accepted methods that may be used to determine the value of real and personal property. They are the cost approach, the income approach and the market approach.

a. **Cost approach.** The "cost approach" means "the appraisal process in which replacement cost of improvements, less all types of depreciation, is added to a land value in determining an estimate of the fair market value for improved real property." W. Va. Code St. R. § 110-1P-2.4. "To determine fair market value under this approach, the replacement cost of the improvements is reduced by the amount of accrued depreciation and added to an estimated land value. In applying the cost approach, the Tax Commissioner [and county assessor] consider three (3) types of depreciation: physical depreciation, functional obsolescence, and economic obsolescence. W. Va. Code St. R. § 110-1P-3.2.1.1.

(1) "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." W. Va. Code St. R. § 110-1P-2.5.

(2) "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." W. Va. Code § 110-1P-2.5.

(3) "Functional obsolescence" means "[t]he loss of value due to factors such as excess capacity, changes in technology, flow of material, seasonal use, part-time use or other like factors. Functional obsolescence includes loss of value due to the

inability of an item to perform adequately the function for which the item was designed.” W. Va. Code St. R. § 110-1P-2.8.

- (4) “Physical depreciation” means “a loss in value due to natural wear and tear of property resulting from age, use, abuse, etc.” W. Va. Code St. R. § 110-1P-2.20.
- (5) "Replacement cost" means “the cost of constructing a building or improvement having the same use, but using modern materials, design, and workmanship.” W. Va. Code § 110-1P-2.22.

b. Income approach. The “income approach” means “the appraisal process of discounting an estimate of future income into an expression of present worth.” W. Va, Code St. R. § 110-1P-2.12. A property's present worth is directly related to its ability to produce an income over the life of the property. The selection of an overall capitalization rate is derived from current available market data by dividing annual net income by the current selling price of comparable properties. The present fair market value of the property is then determined by dividing the annual economic rent by the capitalization rate. See W. Va. Code St. R. § 110-1P-3.2.1.2.

c. Market approach. The “market approach” means “the appraisal process of examining sales data and translating the data into an estimate of present worth.” W. Va. Code St. R. § 110-1P-2.17. The Tax Commissioner and county assessors apply the market approach by considering the selling prices of comparable properties. See W. Va. Code St. R. § 110-1P-3.2.1.3.

2. When possible the Tax Commissioner and county assessors should use more than one method to determine the value of the property and then correlate the value determined under each method. Use of multiple methods acts as a check and balance on the values so determined

3. When multiple approaches are used to determine the value of property, reconciliation, also called correlation, is the final step in the valuation process wherein consideration is given to the relative strengths and weaknesses of the three approaches to value, the nature of the property appraised, and the quantity and quality of available data in formation of an overall opinion of value (either a single point estimate or a range of value). *Glossary for Property Appraisal and Assessment*, International Association of Assessing Officers at page 139 (2nd edition 2013).

4. The Tax Commissioner and county assessors are instructed to use the most accurate method of appraisal to determine the appraised value of the property. W. Va. Code § 110-1P-3.2.2.a. However, because of the difficulty in obtaining necessary data from the taxpayer, or due to the lack of comparable commercial or industrial properties, the choice between the alternative appraisal methods may be limited. *Ibid.*

C. Residential Property Valuation Issues

1. "All property . . . shall be assessed annually as of July 1 at sixty percent of its true and actual value; that is to say, at the price for which the property would sell if voluntarily offered for sale by the owner thereof, upon the terms as the property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if the property were sold at a forced sale." W. Va. Code § 11-3-1(a).

2. Assessors generally value real estate through the use of an Integrated Assessment System (IAS), supplied by the State. IAS separately values raw land and structures. The assessor enters in data concerning comparable sales, information collected by field appraisers, and the consideration paid for arms-length sales.

3. Administrative Notice 2015-15 describes the process by which county assessors determine the appraised value of real property using the Integrated Assessment System. This notice reads, in relevant part:

Several years ago the State Tax Department purchased real estate mass appraisal software called IAS. This software is installed on the network server in Charleston and is accessed through computers in each County Assessor's Office.

Generally, IAS will separately value raw land and structures. This software provides for the entry of data by the local Assessor concerning "comparable sales" of land in particular "neighborhoods" in the county and then prices the value of this land on a "price per front foot or square foot" or by acreage. All such data is entered by tax map and parcel number. In addition, this software contains "replacement cost" pricing features for structures that will allow the local Assessor to enter data such as the size and dimensions of a structure and its rooms, construction materials utilized, quality of construction, date of construction, present condition, style, mechanical systems such as air conditioning and/or furnace, bathrooms, porches, decks, garages, basements, chimneys, exterior and outbuildings. Data collected by the field data collectors/appraisers is entered upon a field card called a "property record card" or "review document - which corresponds to an IAS data entry screen. A data entry clerk then will enter the information taken from the field card into a computer. The IAS software then prices the improvements utilizing construction cost data particularized for that area of the State. A county modifier is utilized to modify the price of the improvements based upon current construction costs.

The local Assessor divides his or her county into "neighborhoods" giving consideration to similarities such as parcel size, roads, topography, costs, type and quality of improvements for land pricing. A neighborhood is "a geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends and housing characteristics". Sometimes a large subdivision, town or city will contain several "neighborhoods". Other times a

subdivision or agricultural area will be unique and will stand alone as a single neighborhood.

The County Clerk prepares a "Certificate of Transfer" which will state change of ownership, legal description and whether the transfer is deed stamp exempt or not and whether consideration was paid. The County Clerk provides these "Certificates of Transfer" to the Assessor. The Assessor will receive a copy of the "Certificate of Transfer" for each such conveyance. The Assessor, by tax map and parcel number, will enter into the computer these "transfers" indicating the "consideration" paid for a particular parcel but also indicating by "validity code" whether the sale is a "valid sale", "involved additional parcels", "not open market", "changed after sale", "related person", "forced sale", "land contract", "construction costs" or "included personal property".

Based upon the "transfer" values, that are identified by the Assessor as being valid arms-length sales as defined by State law, the Assessor will generate a "price per front foot or square foot" for smaller parcels or a monetary per acre value for larger parcels in each neighborhood. Again all data is entered by tax map and parcel number. In those "neighborhoods" where there have been insufficient numbers of "transfers" of unimproved land to generate a "price per front foot or square foot" or a monetary per acre value, the Assessor will take a valid "transfer" price for an improved parcel, value the improvements and subtract the price of the improvements to arrive at a value for the land. This method commonly referred to as a "land residual method", will then generate a "price per front foot" or a per acre value for the raw land in that neighborhood. Each parcel is physically reviewed and adjustments applied to reflect individual variations with each neighborhood.

Mapping is crucial to any mass appraisal. The county tax maps have been generated over the years utilizing recorded plats, recorded descriptions and aerial photography. Tax map and parcel numbers are assigned to each parcel in the county. Based upon lot measurement or acreage derived by mapping, lot dimensions or acreage is entered into the IAS system by tax map and parcel number for each lot or parcel. The "price per front foot" or acreage value for the neighborhood is then applied to each lot or parcel in the neighborhood. as the ease may be, to arrive at an appraised value for the land. This appraised value will reflect market value for the subject land.

Field data collection is the key to "pricing" an improvement. The field data collector or appraiser will visit the structure. He will note on the "property record card" the type of structure, the exterior walls, the style of the structure, the age of the structure, the living accommodations to include total number of rooms. bedrooms, family rooms, plumbing, basement, heating, attic, physical condition, other features such as recreation room area, finished basement living area, basement garage, unfinished area, grade factor, cost and design factor and CDU

(condition, desirability and utility factor). The field data collector or appraiser will measure the structure and other structures on the lot or parcel and note on the "property record card" the dimensions of each structure and will draw a ground floor sketch of the dwelling or main structure and additions. Finally, the field data collector or appraiser will visit the "other buildings and yard improvements" and note on the "property record card" the "type code", "quantity", "year", "size", "grade", and "condition" of the other improvements. The data entered on the "property record card" or "review document" is then entered into the IAS system by the data entry clerk and the IAS system then generates the depreciated replacement cost value, which is market value of the improvements.

The appraised values for improved real property thus determined are compared to the arms-length selling prices of properties that have recently sold to develop an appraisal/sales ratio for each neighborhood. Results from the appraisal/sales ratio are analyzed and neighborhood-pricing factors adjusted to bring the ratio in each neighborhood to within 10% plus or minus of average selling price.

4. The weakness of this system is accuracy of data collected and entered into the ISA system by county assessors and their employees and how current the data is. This was identified as a deficiency in the offices of several county assessors during the statewide equalization study mandated by the Legislature several years ago. When the data was updated, it sometimes resulted in large increases in assessed values. This resulted in a number of Senators and Delegates introducing legislation to limit in any year the percentage increase in assessed valuation unless the increase was due to new construction.

5. Interestingly, W. Va. Code § 11-3-1(b) requires that value of owner-occupied residential property be arrived at by giving consideration to the fair and reasonable amount of income the property might earn under normal conditions in the area where it is located **if rented**.

"[T]he true and actual value of all property owned, used and occupied by the owner thereof exclusively for residential purposes shall be arrived at by also giving 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**[" W. Va. Code § 11-3-1(b) (emphasis added).

Clearly, this approach is not use to value owner occupied residential property.

D. Commercial Property Valuation Issues

1. For property tax purposes, "commercial property" is any business property that is not industrial (i.e. manufacturing), natural resource, public utility, timberland or agricultural property (e.g. retail stores, service businesses, shopping malls, apartment and office buildings, etc.).

2. Primary appraisal authority for commercial property and agricultural property is assigned to county assessors, subject to rules and oversight of State Tax Commissioner. The Tax Commissioner has the primary appraisal authority for all other business property except public utility property, which is assessed by the Board of Public Works after receiving tentative valuations for the property from the State Tax Commissioner.

3. National appraisal standards favor use of the income method over the cost method for income-producing properties. This is because the capacity of a commercial property to generate a return on investment is the primary factor a purchaser considers when deciding whether, and how much, to invest in the income-producing property. The preference of appraisal professionals for use of the income method to value income-producing properties, over use of the cost method, is also based on the inherent arbitrariness of the cost method as a property ages and the appraiser's selection of the various depreciation measures (i.e. physical, functional and economic) becomes less fact-based and more obsolete and subjective.

4. Even though some version of the income method is (except for industrial properties and natural resource reserve properties that are not coal, oil, gas or timberland) the exclusive method the State Tax Commissioner uses to appraise other types of income-producing business properties valued by the State Tax Department, and by the county assessors when they value farm property, the county assessors primarily use only the cost method to determine the appraised value of income-producing commercial properties.

5. The dichotomy in the methods used to appraise income-producing business property is based primarily on the fact that historically, county assessors only had access the module of the State's Computer Assisted Mass Appraisal (CAMA) system that supports the cost method. Within the last several years, assessors were given access to income module of the CAMA system. However, many assessors continue to prefer to use the cost method of valuing commercial properties. We do not know the extent to which assessors and their staffs have received training on use of the income module of the CAMA system to value income producing commercial properties. For example, the State Tax Department's *Guide for County Assessors* makes no mention of how to use the income method to value commercial income producing properties using the income method of valuation. In contrast, see, for example, the *Assessor's Handbook* published by the California State Board of Equalization which has more than 57 pages discussing the subject. It also appears that county assessors may not have collected the data necessary to use the income method of valuation to value commercial income producing properties in their counties.

6. While, commercial property owners now have a limited opportunity under the law to offer data to the county assessor supporting his or her consideration of the income method, neither the

State Tax Commissioner's commercial property return form, which taxpayers and assessors are required to use, nor any other meaningful technical assistance provided by that office to county assessors, actively and regularly contemplates use of the income method for commercial income producing property.

7. Although a few exceptions do occur (inherently raising "equal and uniform" taxation concerns), in the vast number of cases, due to such limited technical capacity and support, county assessors choose to exercise their broad legal discretion to use only the cost method for valuing income-producing commercial property.

8. **Reform possibilities.** The statutory framework for possible reform already exists in certain provisions of the property tax code. Consideration could be given to:

a. Changing the principal authority for establishing appraised values of income producing commercial property from the under-resourced county assessors to the State Tax Commissioner whose staff has extensive experience in application of the income method for other types of income producing business properties;

b. Making the current statutory provisions allowing taxpayer submission of data relevant to income method appraisals more comprehensive and administratively availing, by requiring the appraising official (whether the State Tax Commissioner or a county assessor) to prioritize its use, through specific forms and procedures, in setting the appraised value of income-producing property (including both commercial and industrial property). See, WV Code §§ 11-3-15c and 11-3-15e. If these types of changes were made, the perceived administrative challenges to relying on the income approach to valuing income producing commercial properties would be largely mitigated; or

c. Strengthening, broadening the scope and clarifying current statutory provisions that make taxpayer information confidential so that they apply to income data provided by commercial property owners to the county assessor. See, W. Va. Code § 11-1C-14. This may be as simple as amending W. Va. Code § 11-1A-23 and redesignating the section as Section 11-1C-15.

§11-1A-23. Confidentiality and disclosure of property tax returns and return information; offenses; penalties.

(a) *Secrecy of returns and return information.* -- Property tax returns and return information filed or supplied pursuant to this article and articles three, four, five and six of this chapter and information obtained by subpoena or subpoena duces tecum issued under the provisions of this article shall be confidential and except as authorized in this section, no officer or employee of the State Tax Department, county assessors, county commissions and the board of public works shall disclose any return or return information obtained by him or her, including such return information obtained by subpoena, in any manner in connection with his or her service as such an officer, member or employee: *Provided*, That nothing herein shall make confidential the itemized description of the property listed, in order to ascertain that all property subject to assessment has been subjected to

appraisal: *Provided, however,* That the commissioner and the assessors shall withhold from public disclosure the specific description of burglar alarms and other similar security systems held by any person, stocks, bonds and other personal property held by a natural person, except motor vehicles and other tangible property utilized publicly, and shall withhold from public disclosure information claimed by any taxpayer to constitute a trade secret or confidential patent information: *Provided further,* That such property descriptions withheld from public disclosure shall be subject to production and inspection in connection with any review, protest or intervention in the appraisal or assessment process, under such reasonable limitations as the board of review, board of equalization and review or court shall require. The term officer or employee includes a former officer, member or employee.

(b) *Disclosure.* -- (1) Information made confidential by subsection (a) of this section shall be open to inspection by or disclosure to officers, members and employees of the State Tax Department, county assessors, county commissions, county sheriffs, municipal financial officers and to members of the board of public works whose official duties require such inspection or disclosures for property tax administration purposes. Disclosure may be made to persons, or officers or employees thereof, who are employed by the state Tax Commissioner by contract or otherwise, provided such person, or officer or employee thereof, shall be subject to the provisions of this section as fully as if he or she was an officer or employee of the State Tax Department. Information made confidential by subsection (a) of this section shall be open to inspection by the property owner providing such information and to his or her duly authorized representative.

(2) Information made confidential by subsection (a) of this section may be disclosed in a judicial or administrative proceeding to collect or ascertain the amount of tax due, but only if: (i) The taxpayer is a party to the proceedings or; (ii) such return information directly relates to a transactional relationship between a person who is a party to the proceeding and the taxpayer which directly affects the resolution of an issue in the proceeding.

(c) *Reciprocal exchange.* -- The Tax Commissioner may permit the proper officer of the United States, or the District of Columbia, or any other state, or his or her authorized representative, to inspect reports, declarations or returns filed with the Tax Commissioner or may furnish to such officer or representative a copy of any such document provided such other jurisdiction grants substantially similar privileges to the Tax Commissioner or to the Attorney General of this state.

(d) *Penalties.* -- Any officer, member or employee of the State Tax Department, county assessors, county commissions, county sheriffs, municipal financial officers and the board of public works who violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or imprisoned for not more than one year, or both, together with the costs of prosecution.

(e) *Limitations.* -- Any person protected by the provisions of this article may, in writing, waive the secrecy provision of this section for such purpose and such period as he or she shall therein state, and the officer with whom such waiver is

filed, if he or she so determines may thereupon release to designated recipients such taxpayer's return or other particulars filed under the provisions of the tax articles administered under the provisions of this article.

This section shall not be construed to prohibit the publication or release of statistics so classified so as to prevent the identification of particular reports and the items thereof nor to prevent the publication and release of assessments and appraised values of property.

E. Industrial Property Valuation Issues

1. The appraised value of industrial real and personal property is determined by the Tax Commission as provided in W. Va. Code § 11-6K-1, et seq.

2. "Industrial property" is defined in W. Va. Code § 11-1C-10(a)(1) and means "real and personal property integrated as a functioning unit intended for the assembling, processing and manufacturing of finished or partially finished products." See also W. Va. Code § 11-6K-2(2) similarly defining "industrial property."

3. "Industrial property" also includes tangible personal property owned by the person producing natural resources. This is because the statutory definition of natural resource property does not include personal property.

"Natural resources property" is defined in W. Va. Code § 11-1C-10(a)(2) and means "coal, oil, natural gas, limestone, fireclay, dolomite, sandstone, shale, sand and gravel, salt, lead, zinc, manganese, iron ore, radioactive minerals, oil shale, managed timberland as defined in section two of this article, and other minerals."

4. A common complaint by owners of industrial personal property is the amount of depreciation allowed by the State Tax Department.

5. Finally, owners of industrial property should also have an opportunity to request that their industrial facilities be valued using the income method of valuation.