TITLE 110
LEGISLATIVE RULE
TAX DEPARTMENT

SERIES 1P
VALUATION OF COMMERCIAL AND INDUSTRIAL REAL AND PERSONAL PROPERTY FOR AD VALOREM PROPERTY TAX PURPOSES

§110-1P-1. General.

1.1. Scope. -- These regulations clarify and implement State law as it relates to the appraisal at market value of commercial and industrial real and personal property under W. Va. Code §11-10C-10.

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

1.3. Filing date. -- May 21, 2013.

1.4. Effective date. -- July 1, 2013.

§110-1P-2. Definitions.

For purposes of this rule, the following terms have the meanings ascribed in this section, unless the context in which they are used requires a different meaning.

2.1. "Active industrial or commercial land" means that portion of land used for industrial and commercial purposes.

2.2. "Capitalization rate" means a rate used to convert an estimate of future income to an estimate of present market value.

2.3. "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 motels.

2.4. "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.

2.5. "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.

2.6. "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.

2.7. "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.

2.8. "Functional obsolescence." - The loss of value due to factors such as excess capacity, changes in technology, flow of material, seasonal use, part-time use or other like factors. Functional obsolescence includes loss of value due to the inability of an item to perform adequately the function for which the item was designed.

2.9. "Freehold estate" means an 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 tenant at the least, possessing two (2) characteristics: (1) immobility and (2) indeterminate duration (no fixed termination of the interest).

2.10. "Gross lease" means a lease agreement where the lessor pays all fixed charges (property taxes, maintenance, etc.).

2.11. "Heavy industrial site" means an industrial site containing five (5) acres or more of land.

2.12. "Income approach" means the appraisal process of discounting an estimate of future income into an expression of present worth.

2.13. "Industrial parks" means a parcel or group of parcels dedicated primarily to commercial and industrial development.

2.14. "Leased fee" means the interest remaining in one who has granted possession and occupancy to another for a designated term under a lease contract. Generally, it is the interest of the owner in his or her property after it has been leased.

2.15. "Leasehold" and "leasehold estate" mean an interest in real property created by a lease contract. The leasehold is the right to occupy and use the property for the term fixed in the lease, at a stated rental, and subject to conditions set forth in the contract.

2.16. "Light industrial or commercial site" means an industrial site containing less than five (5) acres of land.

2.17. "Market approach" means the appraisal process of examining sales data and translating the data into an estimate of present worth.

2.18. "Mine site" means a parcel of land containing the mine portal or shaft, parking lots, water treatment facilities, mine fan areas, refuse piles and preparation plant sites.

2.19. "Net rental" means an agreement specification where the lessor receives an annual rent net, with the lessee paying all property taxes, insurance and cost of building maintenance, as well as operating expenses.

2.20. "Physical depreciation " means a loss in value due to natural wear and tear of property resulting from age, use, abuse, etc.

2.21. "Property residual method of valuation" means that, at the expiration of the term of the lease, even though the building may have little value, the land will have a reversionary value. Both the income stream for the estimated useful life of the building and the reversionary interest in the land are discounted to present worth. This method is applicable where the building is old, the site under-improved, or the improvements have a short remaining useful or economic life.

2.22. "Replacement cost" means the cost of constructing a building or improvement having the same use, but using modern materials, design, and workmanship.

2.23. "Residual industrial or commercial land" means that portion of a parcel of real estate that is currently nonproductive in terms of the industrial or commercial activity located on it. This classification of land would include land held for industrial expansion, land marginally suitable for industrial use and excess acreage.

§110-1P-3. Appraisal of Valuation of Commercial and Industrial Real Property.

3.1. Introduction. – This rule describes the method for determining the appraised value (market value) of commercial and industrial real property other than natural resources real property, land used for farming purposes and operating public utility property.

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.

3.2. Generally accepted appraisal methods are used to establish the value of industrial and commercial real properties.

3.2.1. In determining an estimate of fair market value, the Tax Commissioner shall consider and use where applicable, three (3) generally accepted approaches to value: (A) cost, (B) income, and (C) market.

3.2.1.1. Cost approach. - To determine fair market value under this approach, 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 shall consider three (3) types of depreciation: physical depreciation, functional obsolescence, and economic obsolescence.

3.2.1.2. Income approach. - 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 shall be 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 shall then be determined by dividing the annual economic rent by the capitalization rate.

3.2.1.3. Market approach. - The Tax Commissioner shall apply the market approach by considering the selling prices of comparable properties.

3.2.2. Correlation. - Once generated, the Tax Commissioner may consider the various estimates of value in determining a final value estimate. However, the income approach is ordinarily inappropriate for properties such as franchised restaurants, governmental properties, hospitals, etc. In these cases, the cost or market approaches may be more suitable in estimating fair market value.

3.2.2.a. When possible, the Tax Commissioner should use the most accurate form of appraisal, but 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.

3.2.3. Industrial and commercial site classification. - For purposes of valuing active and residual industrial and commercial land in West Virginia, the Tax Commissioner shall separate valuing sites into four (4) broad categories: heavy industrial sites, light industrial or commercial sites, industrial parks, and mine sites. The Tax Commissioner shall further classify these sites, when appropriate, into active and residual portions. The Tax Commissioner will consider these classifications when applying and establishing the valuation method to the industrial or commercial properties.

3.3. Valuation of leaseholds in industrial and commercial real properties.

3.3.1. General.

3.3.1.1. A leasehold in real property is taxable for ad valorem property tax purposes, if it has a separate and independent value from the freehold. Where leaseholds are of short duration, the rent paid usually reflects income to the owner of the freehold commensurate with the fair market value of the real property. Under ordinary conditions, the leasehold itself will not have any ascertainable market value. Consequently, in normal circumstances, determine the appraised value of the freehold subject to a leasehold in the same manner that the appraised value of similar commercial or industrial real property not subject to a leasehold is determined.

3.3.1.2. However, under circumstances involving long-term leaseholds where the leasehold is itself a marketable asset of value, the leasehold shall be valued as set forth in this rule. The leasehold interest being a chattel real shall be listed and taxed as Class III or Class IV tangible personal property depending on the location of the freehold.

3.3.1.3. The appraised value of a freehold estate is the appraised value of the freehold determined without regard to the leasehold, minus the appraised value of the leasehold.

3.1.4. In valuing a leasehold:

3.3.1.4.a. The total value of the property must be estimated and then allocated among the various interests in the property under the terms of the lease; and

3.3.1.4.b. The appraiser shall determine whether or not value has been created as a result of a favorable lease, in addition to the total value of the property.

3.3.1.5. In deciding whether a leasehold has value, and if so, what value to assign, the appraiser shall:

3.3.1.5.a. Estimate the value of the entire property, as though not encumbered by the lease; then

3.3.1.5.b. Estimate the value of one (1) of the partial interests, either the leasehold estate of the lessee or the leased fee of the lessor.

3.3.1.5.c. The appraiser shall deduct the value of the partial interest arrived at from the value of the entire property to obtain the value of the other partial interest.

3.3.1.6. To value a leasehold interest, the appraiser shall consider the present (discounted) worth of the rent saving, when the contractual rent at the time of appraisal is less than the current market rent. If the land is improved by the lessee, then the value of the leasehold interest shall be the value of the saving in ground rent, if any, in addition to the value (not cost) of the improvements of the lessee. If the contractual rent is greater than the currently established market rent, the appraiser shall subtract present worth of the difference from the value of the improvement.

3.3.1.7. When a property is under long-term lease to a prime tenant, such as a nationally-known chain store concern, and the estimated useful life of the building exceeds the term of the lease, the appraiser may use the "Property Residual Technique" of evaluation along with other generally accepted appraisal techniques, i.e., cost and market approaches.

3.4. Valuation of commercial and industrial personal property.

3.4.1. General. - The object of this rule is to provide methodologies for appraising commercial and industrial furniture, fixtures, machinery, equipment, inventory, material and supplies.

3.4.2. Situs.

3.4.2.1. The situs of commercial and industrial furniture, fixtures, machinery, equipment, inventory, material and supplies shall depend upon an analysis of the residence of the owner, and the location of the personal property and whether the personal property is subject to personal property taxation by another state and is taxed by the other state.

3.4.2.2. All commercial and industrial personal property belonging to persons or corporations residing in this State, whether the property is in or out of the State is taxable, as personal property, unless the property is actually and permanently located in another state, and is subject to taxation as personal property and is actually taxed as personal property in the other state.

3.4.2.3. 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 by this State.

3.4.3. Valuation of commercial and industrial personal property.

3.4.3.1. Three (3) approaches to fair value considered and used in estimating fair market value are: (A) cost, (B) income, and (C) market.

3.4.3.2. Correlation. - Once generated, consider the various estimates of value when estimating final value. Of the three (3) approaches to value, the cost approach may apply most consistently 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.

3.4.3.2.a. When possible, use an audit appraisal method. Use a physical appraisal method if experiencing difficulty in obtaining necessary accounting data from the taxpayer or lack comparable commercial or industrial personal properties.

3.4.3.3. Adjustments. – When physically inspecting commercial and industrial personal property for appraisal, use three (3) types of depreciation: should be considered; physical deterioration depreciation, economic obsolescence and functional obsolescence.

3.4.3.4. Valuation of common commercial and industrial personal property. Use current appraisal guidelines furnished by the Tax Commissioner to local assessors when valuing frequently encountered commercial and industrial personal properties common to numerous businesses within a taxing district.

3.5. Depreciation Adjustments.

3.5.1. Physical Depreciation - Depreciation tables for commercial and industrial personal property are developed using the Marshall Valuation Service as the source guide.

3.5.2. Economic Obsolescence - Economic obsolescence can best be measured by either a market approach method or an income method. Due to the lack of sales volume for comparable commercial or industrial properties, an income approach is normally used. However a market approach method may be used where the specific facts and circumstances would indicate that that method would achieve a more accurate measure of value.

3.5.3. Functional Obsolescence - Some functional obsolescence is accounted for in the Marshall Valuation Service depreciation tables. Functional obsolescence can be either curable or incurable. Curable functional obsolescence can be measured by the use of cost to cure methods. Incurable functional obsolescence can be measured by either a market approach method or an income approach method. Due to the lack of sales volume for comparable commercial or industrial properties, an income approach method is normally used. However a market approach method may be used where the specific facts and circumstances would indicate that that method would achieve a more accurate measure of value. Cost to cure means the cost of repairs, the cost of investment in substitution or replacement of property and the cost of additional property, including installation costs, necessary to bring a subject property to current market standards or industry standards and optimize the value of the property.

3.5.3.1. Curable and Incurable Functional Obsolescence.

3.5.3.1.1. Superadequacy -- Superadequacy is functional obsolescence which occurs when property has unnecessary or excess productive capacity such that the commercial or industrial property is underutilized, or where the property or a portion or component of the property adds no value based on the current use of the property or anticipated future use of the property. Superadequacies often result from decreases in demand for a product produced at the subject property, such that the productive capacity of the subject property is underutilized. A superadequacy is curable if it is economically feasible to remove or remediate the superadequacy, and is not curable if removal or remediation of the superadequacy is not economically feasible.

3.5.3.2. Deficiency – Deficiency is functional obsolescence which occurs when property has a capacity or quality that is less than current market standards or industry standards, and which requires additional investment in repairs, or in substitution or replacement of property or installation of additional property, to bring the subject property to current standards and improve the income producing capacity or productivity of the property. Deficiencies often result from age and from failures of timely maintenance, repairs and capital replacements or capital improvements. A deficiency is curable if it is economically feasible to remove or remediate the deficiency, and is not curable if removal or remediation of the deficiency is not economically feasible.

3.5.4. Special Circumstances – In the event a commercial or industrial facility is shut down on the assessment date, economic and functional obsolescence cannot easily be determined. In these cases the Tax Commissioner shall consider the following.

3.5.4.1. Plant Shut Down Temporarily – An income approach method shall be considered based on the anticipated restart date and discounted back to the assessment date.

3.5.4.2. Plant Shut Down Indefinitely –Personal property should be appraised considering an orderly sale of the property, either piecemeal or as a unit, whichever provides the more accurate valuation, depending on the facts and circumstances of the particular case. Personal property with a discernible market value should be appraised at that value. Other personal property should be appraised at salvage or scrap value.