WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

ENROLLED

HOUSE BILL No. 2189

Martin, Williams, Douglas,
(By Delegate Mezzatesta, Michael and Willison)

Passed April 12, 1997

In Effect From Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2189
(BY DELEGATES MARTIN, WILLIAMS, DOUGLAS,
MEZZATESTA, MICHAEL AND WILLISON)

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

AN ACT to amend and reenact sections two and eleven, article one-c, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding there two new sections, designated sections eleven-a and eleven-b; and that article three of said chapter be amended by adding thereto two new sections, designated sections five-a and thirty-two, all relating generally to taxation of real property; creating legislative findings and intent; adding definitions; establishing criteria and classification of managed timberland for taxation; directing tax department to propose legislative rules relating to setting timberland tax values; setting requirements and penalties for county assessors applying certain valuations; providing public access to property classifications and for appeals thereof; clarifying activities considered farm use; requiring farm land be appraised based on type of farming use; defining residential property use; establishing procedures for designating and changing uses of property for tax purposes; establishing new taxing guidelines for managed timberland; establishing a procedure for reassessing taxes upon alteration of use of all or parts of a parcel of property and collecting roll-back taxes relating thereto; creating limitations and criteria for assessing
roll-back taxes; creating an appeal process for classification
determinations; establishing rates and interest collected for
taxes due; providing for reclassification of tax classes for
property when the property use changes or the property is
subdivided or otherwise transferred; providing for collection
and liens associated with roll-back taxes; and establishing
effective dates for the provisions of this act.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-2. Definitions.

For the purposes of this article, the following words
shall have the meanings hereafter ascribed to them unless
the context clearly indicates otherwise:

(a) “County board of education” or “board”
means the duly elected board of education of each coun-

(b) “Farm” means a tract or contiguous tract of
land used for agriculture, horticulture or grazing and
includes:

(1) Land currently being used primarily for farming
purposes, whether by the owner or a bona fide tenant, and
which has been so used for at least seasonally during the
year next preceding the then current tax year, but shall not
include lands used primarily in commercial forestry or the
growing of timber for commercial purposes; and shall not
include one acre surrounding the principal residence situ-
ated on a farm which shall be valued as a homesite in the
same manner as surrounding homes and properties not
situated on farmland, taking into consideration such vari-
ables as location, resale value and accessibility. The com-
missioner of agriculture shall formulate criteria upon which a parcel of land qualifies as a "farm". The county assessor may require the assistance of the commissioner of agriculture in making a determination of whether a parcel of land qualifies as a "farm"; and

(2) All real property designated as "wetlands" by the United States army corps of engineers or the United States fish and wildlife service. The commissioner of agriculture shall formulate criteria upon which a parcel of land qualifies as a "farm". The county assessor may require the assistance of the commissioner of agriculture in making a determination of whether a parcel of land qualifies as a "farm".

(c) "Farming purposes" means the utilization of land to produce for sale, consumption or use, any agricultural products, including, but not limited to, livestock, poultry, fruit, vegetables, grains or hays or any of the products derived from any of the foregoing, tobacco, syrups, honey, and all horticultural and nursery stock, Christmas trees, all sizes of ornamental trees, sod, seed and any and all similar commodities or products, including farm wood lots and parts of a farm which are lands lying fallow, or in timber or in wastelands.

(d) "Managed timberland" means surface real property, except farm woodlots, of not less than ten contiguous acres which is devoted primarily to forest use and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site, and that is managed pursuant to a plan provided for in section ten of this article.

(e) "Owner" means the person who is possessed of the freehold, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability is deemed the owner until the mortgagee or trust takes possession, after which such mortgagee or trustee shall be deemed the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before transfer of
legal title is also deemed the owner.

(f) "Tax commissioner," "commissioner," or "tax department" means the state tax commissioner or a designee of the state tax commissioner.

(g) "Timberland" means any surface real property except farm woodlots of not less than ten contiguous acres which is primarily in forest and which, in consideration of their size, has sufficient numbers of commercially valuable species of trees to constitute at least forty percent normal stocking of forest trees which are well distributed over the growing site.

(h) "Used and occupied by the owner thereof exclusively for residential purposes" means actual habitation by the owner of all or a portion of a parcel of real property as a place of abode to the exclusion of any commercial use: Provided, That mere entry into a contract to manage timberland according to a plan that will maintain the property as managed timberland shall not result in reclassification of the property to class three or class four, absent some other event or a change in the use of the property that disqualifies it from being valued as residential property and from being taxed in class two. If a license is required for an activity on the premises or if an activity is conducted thereon which involves the use of equipment of a character not commonly employed solely for domestic purposes as distinguished from commercial purposes, the use may not be construed to be exclusively residential.

(i) "Valuation commission" or "commission" means the commission created in section three of this article.

(j) "Wood lot" means that portion of a farm in timber but may not include land used primarily for the growing of timber for commercial purposes except that christmas trees, or nursery stock and woodland products, such as nuts or fruits harvested for human consumption, shall be considered farm products and not timber products.

Amendments to this section in the year one thousand
nine hundred ninety-seven shall apply to tax years begin-
ing on or after the first day of January, one thousand
nine hundred ninety-eight.

§11-1C-11. Managed timberland; findings, purposes and decla-
ration of legislative intent; implementation; inspection and determination of qualification.

(a) The Legislature finds and declares that the public
welfare is enhanced by encouraging and sustaining the
abundance of high quality forest land within the state; that
economic pressures may force industrial, residential or
other land development inconsistent with sustaining the
forests; and that tax policy should provide an incentive for
private owners of forest land to preserve the character and
use of land as forest land and to make management deci-
sions which enhance the quality of the future forest.

(b) In exercising the authority granted by the provi-
sions of section fifty-three, article six of the Constitution
of West Virginia, the Legislature makes the following
declarations of its intent:

(1) Notwithstanding the provisions of section twenty-
four, article three of this chapter, managed timberland
embraced in a cooperative contract with the division of
forestry shall be valued as managed timberland as provid-
ed in this article and rules of the tax commissioner pro-
mulgated thereunder.

(2) Property certified as managed timberland which
prior to certification is properly taxed in class two, as de-
defined in section five, article eight of this chapter and sec-
tion one, article ten of the Constitution of West Virginia,
may not be reclassified to class three or class four, as de-
defined in section one of said chapter eight, merely because
the property is certified as managed timberland unless
there is some other event or change in the use of the prop-
erty that disqualifies it from being taxed in class two.

(c) To implement this legislative intent:

(1) The tax commissioner shall establish by legisla-
tive rule a methodology to appraise managed timberland
based upon the value of the land’s potential to produce
future income according to its use and productive potential as managed timberland, which value shall be determined by discounting the potential future net income to its present value utilizing a discounted cash flow model. All timberland that does not qualify as managed timberland shall be valued at market value except for farm wood lots which shall be valued as part of the farm. The tax commissioner shall also establish by legislative rule a method to determine the market value of timberland that is not certified as managed timberland. The value of an acre of managed timberland shall always be less than the value of an acre of timberland of comparable soil quality in the county that is not certified as managed timberland. Notwithstanding the provisions of section five-a of this article, these methodologies may be promulgated as emergency rules if they are filed in the state register on or before the first day of July, one thousand nine hundred ninety-seven.

(2) The tax commissioner shall establish by legislative rule a methodology for determining the value of managed timberland taxed in class two and a methodology for determining the value of managed timberland not taxed in class two. Notwithstanding the provisions of section five-a of this article, these methodologies may be promulgated as emergency rules if they are filed in the state register on or before the first day of July, one thousand nine hundred ninety-seven.

(3) In the event the tax commissioner determines as the result of a survey or other investigation that a county assessor is systematically undervaluing timberland in his or her county that is not managed timberland, the tax commissioner may not authorize payment to that assessor of the additional compensation allowed under section six-a, article seven, chapter seven of this code.

(4) Any person owning real property in a county may apply to the assessor for information regarding the classification of real property owned by that person or the classification of any other real property in the county. If the person is dissatisfied with the classification of any real property in the county, the person may file written objec-
tions to the classification with the county assessor on or
before the fifteenth day of January of the assessment year.
The written objection shall then be treated as a protest
filed by a taxpayer under section twenty-four-a, article
three of this chapter. If any person fails to exhaust the
administrative and judicial remedies provided in section
twenty-four-a of said article three, that person shall be
barred from taking any further administrative or judicial
action regarding the classification of the property for that
assessment year.

(d) Upon request of state, county or other taxing
authorities of appropriate jurisdiction, the division of for-
restry shall inspect property under contract as managed
timberland and shall have the authority and responsibility
to determine whether or not such properties do qualify for
preferential valuation as managed timberland. In the
event that a property is found to not qualify by reason of
a change in its use, or it is discovered that a material mis-
statement of fact was made by the owner in the certifica-
tion required in subdivision (1), subsection (d), section ten
of this article, or it is discovered that the property owner is
not complying with the terms of the managed timberland
plan, including any period of time for coming into com-
pliance granted the owner by the division of forestry, the
division of forestry shall notify the state tax commissioner
that the property is disqualified from its identification as
managed timberland.

(e) Amendments to this section in the year one thou-
sand nine hundred ninety-seven shall apply to tax years
beginning on or after the first day of January, one thou-
sand nine hundred ninety-eight.

§11-1C-11a. Valuation of farm real property.

(a) The appraised value of real property used for
farming purposes shall be its fair and reasonable value for
farming purposes regardless of what the value of the prop-
erty would be if used for some other purpose. This value
shall be arrived at by giving consideration to the fair and
reasonable income which the property might be expected
to earn in the locality where the property is situated, if
rented. The fair and reasonable value for farming purpos-
es shall be deemed to be the market value of such property for appraisement purposes.

(1) A person is not engaged in farming if the person is primarily engaged in forestry or growing timber. Mere entry into a contract to manage timberland according to a plan that will maintain the property as managed timberland shall not result in reclassification of the property to class three or class four absent some other event or a change in the use of the property that disqualifies it from being valued as a farm and from being taxed in class two.

(2) A corporation or limited liability company is not engaged in farming unless its principal activity is the business of farming, and in the event that the controlling stock or membership interest in the corporation or limited liability company is owned by another corporation or limited liability company, the corporation or limited liability company owning the controlling interest must also be primarily engaged in the business of farming.

(b) This section shall apply to tax years beginning on or after the first day of January, one thousand nine hundred ninety-eight.

§11-1C-11b. Valuation of residential property.

Residential real property shall be valued as residential property so long as the property is owned, used and occupied by the owner exclusively for residential purposes and shall not be assessed in accordance with some other method of valuation until the property ceases to be used for residential purposes. This section shall apply to tax years beginning on or after the first day of January, one thousand nine hundred ninety-eight.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-5a. Change in use.

(a) Whenever real property that has qualified for taxation in class two or for use valuation is converted to another use, the person converting the real estate to another use shall immediately, in writing, notify the county assessor of the change in use. The county assessor shall, at
the appropriate time, determine the value and classification
of the property based upon its new use.

(b) Upon receipt of a notice from a person that real
property classified for taxation in class two or for use
valuation is being converted to a new use the director of
the division of forestry shall notify the assessor or assessors in which such property is situate of such change in
use.

(c) If any person fails to give written notice of a
change in use of property as required in subsection (a) of
this section, the person shall be subject to a penalty in an
amount equal to the additional taxes that the person would
have paid if written notice been timely given plus interest
calculated at the rate of six percent per year: Provided,
That the maximum penalty under this section shall be
seven years of back taxes plus interest calculated as pro-
vided in this subsection (c). This penalty may be assessed
in the same manner as back taxes are assessed as provided
in section five of this article for omitted property.

(d) This section shall apply to tax years beginning on
or after the first day of January, one thousand nine hun-
dred ninety-eight.

§11-3-32. Roll-back tax.

(a) The division of a part of the land by deed or
other legal transfer which is being valued, assessed and
taxed as class two property or which is being valued as
managed timberland and taxed in class three or four shall,
except when the division occurs through condemnation,
subjects the land so divided and the entire parcel from
which the land was divided to liability for the roll-back
taxes as set forth in subsection (g) of this section, except as
provided in subsection (b) of this section.

(b) The owner of property subject to preferential
assessment or preferential classification may divide land
covered by the preferential assessment or preferential
classification: Provided, That the tract of land so divided
shall not exceed two acres annually and may only be used
for class two purposes during such time as the land re-
tained shall continue to receive preferential tax assessment or preferential classification and the construction of a residential dwelling to be occupied by the person to whom the property is transferred: Provided, however, That the total parcel or parcels of land so split off under the provisions of this subsection (b) shall not exceed ten percent or ten acres, whichever is less, of the entire tract subject to preferential tax assessment or preferential classification.

Any person may bring an action in the circuit court for the county in which the property is located to enjoin any use of land inconsistent with the use provided in this subsection (b). Such land shall be subject to roll-back taxes due for each divided parcel and for such period of time as provided by subsection (g) of this section. The division of a parcel of land which meets the requirements of this subsection (b) shall not invalidate the preferential assessment or preferential classification and the land retained by the landowner shall continue to be eligible for special use valuation or taxation in class two if it continues to meet the requirements for the special use valuation or for taxation in class two.

(c) The owner of property subject to a preferential use assessment or preferential classification may separate by use, land covered by the preferential use assessment or preferential classification. When a separation by use occurs, all tracts formed thereby shall continue to receive preferential assessment or preferential classification, unless a subsequent abandonment of preferential use occurs within seven years of the separation. Such abandonment shall subject the entire tract of land so separated to liability for the roll-back taxes, which are to be paid by the person changing the use, as set forth in subsection (g) of this section. After seven years from the date of the occurrence of the separation of use, only that portion whose use has been abandoned shall be subject to roll-back taxes as set forth in subsection (g) of this section.

(d) When property subject to preferential assessment is separated by use among the spouse, parents, children or grandchildren, or any combination of these persons, the owner receiving the benefit of preferential tax assessment or preferential classification as a result of the death of the
owner a subsequent change in the use of one such beneficiary’s portion of the property shall not subject any other beneficiary’s portion of the property due roll-back taxes. Roll-back taxes shall be due only in accordance with the provisions of subsection (g) of this section on the tract held by the beneficiary who changes the use of any portion of his or her inheritance.

(e) Any change in use of land subject to preferential use assessment or preferential classification shall be in compliance with any applicable zoning laws then in effect.

(f) Where contiguous land taxed in class two or managed timberland taxed in class three or four is located in more than one county, compliance with any minimum area requirement shall be determined on the basis of the total area of such land and not the area which is located in any particular county.

(g)(l) When any tract of land taxed in class two or any tract of land certified as managed timberland taxed in class three or class four is applied to a use that disqualifies it from being taxed in class two except for a change that merely involves cessation of occupancy of a residence or from being valued based upon its use, except condemnation thereof, the entire tract of land shall no longer be valued based upon its use or taxed in class two. The land so removed and the entire tract of which it was a part shall be subject to taxes in an amount equal to the difference, hereinafter referred to as roll-back taxes, if any, between the taxes paid or payable on the basis of the valuation and the classification authorized under this chapter. This tax assessment will be determined by computing the taxes that would have been paid or payable had that land been valued and taxed as other comparable land in class three or four in the county in the current tax year, the year of change, and in six of the previous tax years or the number of years of preferential valuation or preferential classification up to seven plus interest on each year’s roll-back tax. The rate of interest shall be six percent per year. After the first seven years of preferential valuation or preferential classification, the roll-back shall apply to the seven most recent tax years.
(2) Unpaid roll-back taxes shall be a lien upon the property collectible in the manner provided by law for the collection of delinquent taxes. Roll-back taxes shall become due on the date of change of use, or any other termination of preferential valuation or preferential classification and shall be paid by the owner of the land at the time of change in use, or any other termination of preferential valuation or preferential classification, to the county sheriff, whose responsibility it shall be to make proper distribution of the taxes on the property and interest to the levying bodies.

(3) Within five working days after receipt of a notice from the owner of a property, which is preferentially valued or preferentially classified, of a proposed change in the use of the land to one not meeting the requirements for use valuation or preferential taxation, or of a separation of the land or a split-off of a portion of the land, the county assessor shall:

(A) Calculate by years the total of all roll-back taxes due at the time of change and shall notify the property owner of such amounts. In the case of a conveyance of all or part of such land, the county assessor shall notify the prospective buyer, if known, of such amounts.

(B) With respect to the roll-back taxes for the current year, the county assessor shall notify the levying bodies of the county in which the property is located of the additional amount of assessment upon which taxes and interest shall be levied and collected. The assessor shall also notify the sheriff of the additional taxes and interest to be collected.

(C) With respect to roll-back taxes for years prior to the current year which the county assessor has determined to be due, the assessor shall file a lien for such amounts with the county clerk, which upon filing shall constitute a lien having the same force and effect as a lien for payment of real property taxes.

(h) The assessment, collection, apportionment and payment over of roll-back taxes imposed by section thirteen shall be governed by the procedures provided for the
assessment and taxation of omitted property under section five of this article.

(i) This section shall apply to tax years beginning on or after the first day of January, one thousand nine hundred ninety-eight.
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 disapproved this the 24th day of __________, 1997.

Governor