WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1997

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ENROLLED

HOUSE BILL No. 2590

Mr. Speaker, Mr. Kiss,
(By Delegate __________________ and Delegate Faircloth __________)

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Passed __________________ April 12, 1997

in Effect __________________ From ______________ Passage
ENROLLED

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 held in the year one thousand nine hundred eighty-four, ratified amendment five to the constitution of West Virginia which essentially provides that once the first statewide reappraisal of property pursuant to section one-b, article ten of the constitution is implemented and first employed to fix values for ad valorem property tax purposes, no intangible personal property shall be subject to ad valorem property taxation except as provided by general law enacted after ratification of amendment five;

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

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

5. (4) The Legislature responded to these problems,
actual or perceived, by enacting this article which, as its
primary purpose, resulted in the making of the second
statewide reappraisal of property for ad valorem property
tax purposes, which now results in all property being
assessed and taxed at sixty percent of its market value,
except as otherwise provided by general law; and

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

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

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

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

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

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

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

Notwithstanding anything in this code to the
 contrary, intangible personal property with tax situs in this
state that would have been taxable prior to the effective
date of this act shall be exempt from ad valorem property
tax beginning tax year one thousand ninety-eight:
Provided, That such property shall be subject to ad
valorem property tax and taxed at fifty percent of assessed
value for tax year one thousand nine hundred ninety
eight; at forty percent of assessed value for the tax year
nine hundred ninety-nine; at thirty percent of assessed
value for the tax year two thousand; at twenty percent of
the assessed value for the tax year two thousand one; at ten
percent of the assessed value for the tax year two thousand
two and eliminated completely for the tax year two
thousand three and thereafter.

ARTICLE 3. ASSESSMENTS GENERALLY.

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

For ad valorem property tax purposes, chattel
interests in real property and chattel interest in tangible
personal property are hereby defined to be an interest in
real or tangible personal property and are to be assessed and
taxed like real or tangible personal property is taxed. As
so defined, chattel interest in real property and chattel
interests in tangible personal property are not intangible
personal property for property tax purposes.

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

(a) Each incorporated company, banking institution,
and national banking association, foreign or domestic,
having its principal office or chief place of business in this
state, owning property subject to taxation in this state,
except railroad, telegraph and express companies,
telephone companies, pipeline, car line companies and
other public utility companies, shall annually, between the
first day of the assessment year and the first day of
October, make a written report, verified by the oath of the
president or chief accounting officer, to the assessor of the
county in which its principal office or chief place of
business is situated or in which such property subject to
taxation in this state is located if such corporation does not
have a principal office or chief place of business in this
state, showing the following items, viz: (1) the amount of
capital authorized to be employed by it; (2) the amount of
cash capital paid on each share of stock; (3) the amount
of credits and investments other than its own capital stock
held by it on said date, with their fair market value; (4) the
quantity, location and fair market value of all of its real
estate, and tax district or districts in which it is located; and
(5) the kinds, quantity and fair market value of all its
tangible property in each tax district in which it is located.

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

State of West Virginia, County ............... , ss:

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

........................................

The officer administering such oath shall append
there to the following certificate, viz:

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

(c) The amendments to this section enacted in the
year one thousand nine hundred ninety-seven shall be
effective beginning tax year one thousand nine hundred ninety-eight and thereafter.


(a) Shares of stock in a banking institution, national banking association or industrial loan company shall be assessed at their true and actual value, according to the rules prescribed in this chapter, to the several holders of such stock in the county, district and town where such bank, company or association is located, and not elsewhere, whether such holders reside there or not. The real and actual value of such shares shall be ascertained according to the best information which the assessor may be able to obtain, whether from any return made by such bank, company or association to any officer of the State or the United States, from actual sales of the stock, from answers to questions by the assessor, as hereinafter provided, or from other trustworthy sources. The cashier, secretary or principal accounting officer of every such bank, company or association shall cause to be kept a correct list of the names and residences of all the shareholders therein, and number of shares held by each, which list shall be open to the inspection of the assessors of the county, and of the tax commissioner or assistants; and such cashier, secretary or officer shall answer under oath such questions as the assessor may ask him concerning the matters shown by such list, and concerning the value of such shares, and shall be subject to the same penalties, for failure to do so, which are imposed by law upon individuals failing to answer questions which the assessor is authorized to ask. The taxes so assessed upon the shares of any such bank, company, or association shall be paid by the cashier, secretary or proper accounting officer thereof, and in the same manner and at the same time as other taxes are required to be paid in such county, district and town. In default of such payment such cashier, secretary or accounting officer as well as such bank, company or association shall be liable for such taxes, and in addition, for a sum equal to ten percent thereof. Any taxes so paid upon any such share may, with interest thereon, be recovered from the owners thereof by
the bank, company, association or officer paying them, or may be deducted from the dividends accruing on such shares. The real estate of any such bank, company or association shall be assessed as in other cases, and a proportionate share of such assessed value shall be deducted in ascertaining the market value of the shares. The tangible personal property of any such bank, company, or association shall be assessed as in other cases and a proportional share of such assessed value shall be deducted in ascertaining the market value of the shares for tax years as follows: Such deduction shall be sixteen and sixty-six one hundredth percent of the assessed value of the tangible personal property for the tax year one thousand nine hundred ninety-eight; thirty-three and thirty-two one hundredth percent of the assessed value of the tangible personal property for the tax year one thousand nine hundred ninety-nine; and forty-nine and ninety-eight hundredth percent of the assessed value of the tangible personal property for the tax year two thousand; sixty-six and sixty-four hundredths of the assessed value of the tangible personal property for the tax year two thousand one; eighty-three and twenty one hundredth for the tax year two thousand two with such personal property tax deduction being eliminated entirely for the tax year two thousand three and thereafter. And if such tangible personal property or if the title to the building in which any such bank, company or association does its business and the land on which such building stands is held by separate corporation in which such bank, company or association alone or together with another such bank or banks, company or companies, association or associations owns stock, and such tangible personal property or building and land be assessed to such separate corporation, a proportionate share of the assessed value of such tangible personal property or real estate of such separate company shall be deducted in ascertaining the market value of the shares of such bank, company or association. The return shall be made as of the first day of the assessment year.

(b) This section shall become inoperative beginning tax year two thousand three and thereafter.
§11-3-14a. Taxation of building and loan associations and federal savings and loan associations.

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

The secretary or principal accounting officer of every such building and loan association and federal savings and loan association shall cause to be kept a complete accounting record, including a complete record of all such investment shares and investment share accounts, which shall be open to the inspection of the assessors of the counties, and the tax commissioner or his assistants, and such secretary or officer shall answer under oath such questions as the assessor may ask him concerning the matters shown by such records and accounts, and shall be subject to the same penalties for failure to do so, which are imposed by law upon individuals failing to answer questions which the assessor is authorized to ask. The tax levied and assessed upon the capital of every such building and loan association and federal savings and loan association, shall be paid by such association in the manner and at the same time as other taxes are required to be paid in such county, district and town.
The real estate of any such building and loan association or federal savings and loan association shall be assessed as in other cases, and a proportionate share of such assessed value shall be deducted in ascertaining the value of such capital. The tangible personal property of any such building and loan association or federal and savings loan association shall be assessed as in other cases and a proportionate share of such assessed value shall be deducted in ascertaining the value of the capital for tax years as follows: Such deduction shall be sixteen and sixty-six one hundredth percent of the assessed value of the tangible personal property for the tax year one thousand nine hundred ninety-eight; thirty-three and thirty-two one hundredth percent of the assessed value of the tangible personal property for the tax year one thousand nine hundred ninety-nine; and forty-nine and ninety-eight hundredth percent of the assessed value of the tangible personal property for the tax year two thousand; sixty-six and sixty-four hundredths of the assessed value of the tangible personal property for the tax year two thousand one; eighty-three and twenty one hundredth for the tax year two thousand two with such personal property tax deduction being eliminated entirely for the tax year two thousand three and thereafter. If the title to the building in which any such association does its business and the land on which such building stands is held by a separate corporation, in which any such association alone or together with another such association or banking company or companies own stock, and such building and land be assessed in such separate corporation, a proportionate share of the assessed value of such real estate of such separate company shall be deducted in ascertaining the value of the capital of such association. Every such association shall make a return to the assessor as of the first day of the assessment year.

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

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-3. Definitions.

For the purpose of giving effect to the “Tax Limitations Amendment”, this chapter shall be interpreted in accordance with the following definitions, unless the
context clearly requires a different meaning:

"Owner" means the person, as defined in section ten, article two, chapter two of this code, 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 considered the owner until the mortgagee or trustee takes possession, after which the mortgagee or trustee shall be considered 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 considered the owner.

"Used and occupied by the owner thereof exclusively for residential purpose" 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 if the parcel of real property was unoccupied at the time of assessment and either (a) was used and occupied by the owner thereof exclusively for residential purposes on the first day of July of the previous year or (b) was unimproved on the first of July of the previous year but a building improvement for residential purposes was subsequently constructed thereon between that date and the time of assessment, the property shall be considered "used and occupied by the owner thereof exclusively for residential purpose": Provided, however, That nothing herein contained shall permit an unoccupied or unimproved property to be considered "used and occupied by the owner thereof exclusively for residential purposes" for more than one year. 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 as distinguished from commercial purposes, the use may not be considered to be exclusively residential.

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

"Occupied and cultivated" means subjected as a unit to farm purposes, whether used for habitation or not, and although parts may be lying fallow, in timber or in
ARTICLE 5. ASSESSMENT OF PERSONAL PROPERTY.

§11-5-3. Definitions.

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

"Agriculture" means the cultivation of the soil, including the planting and harvesting of crops and the breeding and management of livestock.

"Horticulture" means plant production of every character except forestry.

"Grazing" means the use of land for pasturage.

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

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

"Tax year" means the calendar year following the July first assessment day or, in the case of a public service business assessed pursuant to article six of this chapter, the calendar year beginning on the January first assessment day.

"While owned by the producer: means while title is in the producer as above defined.

"Employed exclusively" means that the preponderant, and the sole gainful use is for the designated purpose."

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

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

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

[Signature]
Governor