

**TITLE 110  
LEGISLATIVE RULE  
STATE TAX COMMISSION**

**SERIES 1K  
VALUATION OF NATURAL RESOURCES PROPERTY OTHER THAN  
COAL, OIL OR NATURAL GAS FOR AD VALOREM PROPERTY TAX PURPOSES**

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**§ 110-1K-1. General.**

1.1 **Scope.** -- This rule provides the methodology the Tax Commissioner shall use to determine the appraised value of natural resources properties other than coal, oil or natural gas for ad valorem property tax purposes.

1.2 **Authority.** -- W. Va. Code §§ 11-1C-5(a) and (d), 11-1C-5a and 11-1C-10(d).

1.3 **Filing date.** --

1.4 **Effective date.** -- This rule applies to tax years beginning on or after January 1, 2000.

1.5 **Repeal of former rule.** -- This legislative rule repeals and replaces WV 110 C.S.R. 1K, Valuation of Natural Resources Property Other Than Coal, Oil or Natural Gas for Ad Valorem Property Tax Purposes, filed July 26, 1991 and effective July 26, 1991.

**§ 110-1K-2. Introduction.**

2.1 Natural resources, such as limestone, fireclay, dolomite, sandstone, shale, sand and gravel, and salt are some of the several estates in real property. These estates may be owned either as a separate estate, or in conjunction with other estates, usually as fee ownership or as mineral ownership. If other natural resources are owned as a separate estate, either absolute or as a leasehold, West Virginia property tax law requires the ownership to be listed, valued and taxed.

2.2 Other West Virginia natural resources, such as lead, zinc, manganese, iron ore, radioactive minerals, and oil shale, which at present are not being actively mined, shall be valued in accordance with this rule when those estates are separate from the fee interest, or are being leased and/or actively mined.

2.3 The natural resources set forth in subsections 2.1 and 2.2 of this Section may be owned without being mined. Specific title to those natural resources may exist where the resource is not present (barren), or where the natural resource is unmineable, or mined out.

2.4 For valuation purposes, this rule classifies other natural resource property into the following categories:

2.4.1 Active

2.4.2 Reserves

2.4.3 Unmineable

2.4.4 Mined-Out

2.4.5 Barren

### **§ 110-1K-3. Definitions.**

As used in this rule and unless the context clearly requires otherwise, the following terms have the meaning ascribed in this section.

3.1 "**Annual acres mined**" means the average annual production, as defined in subsection 3.3 of this section, divided by the product of the average thickness (Thk) in feet of the natural resource being mined, as detailed in annual mining reports, multiplied by the tons per acre foot (as set out in Appendix A, Formula 2 to this rule) multiplied by the clean resource recovery rate (RR) at the mining operation, or as calculated from tonnage reported to the West Virginia Office of Miner's Health, Safety and Training/Office of Mining and Reclamation if substantially different. Appendix A, Formula 1, is the method to be used for calculating annual acres mined.

3.2 "**Active mining property**" means a mineable natural resource on a parcel or portion of a parcel involved in a mining operation, as defined in this Section, permitted by the West Virginia Office of Miner's Health, Safety and Training/Office of Mining and Reclamation. Each and every mineable natural resource shall be considered a separate active mining property.

3.3 "**Average annual production**" means the arithmetic mean of the annual rate of natural resource production of the three (3) most recent calendar years preceding the July 1st assessment date. If production during any of these three (3) calendar years involved a period of less than eleven (11) months, that production shall be annualized before the average annual production is calculated.

3.4 "**Bands of investment discount component**" means a discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing.

3.5 "**Barren**" means fee or mineral properties where other natural resource rights are owned, but a specific natural resource may never have been deposited or may have been subsequently removed by erosion.

3.6 "**Capitalization rate**" means a rate used to convert an estimate of income into an estimate of market value.

3.7 "**Clean resource recovery rate**" means the percentage of marketable resource that is recovered. The clean resource recovery rate must reflect the difference between calculated whole bed tonnage (tons-in-place) and mined tonnage as reported to the West Virginia Office of Miner's Health, Safety and Training/Office of Mining and Reclamation.

3.8 "**Commissioner**" or "**Tax Commissioner**" means the State Tax Commissioner of the State of West Virginia, or his or her delegate.

3.9 "**Discount component**" means a rate reflecting a provision for returning to an investor a sum of money equal to the aggregate of the anticipated return-on-investment over the economic life of an investment.

3.10 "**Economic life method of recapture**" means a method of developing a recapture rate by estimating the period of time an investment shall produce a return and estimating an equal periodic rate of recapture of the investment over this return period.

3.11 "**Life of mining operation**" means the number of years required to exhaust the natural resource at the average annual production rate. Fractional years shall be rounded to the nearest whole number.

3.12 "**Management rate**" means a rate reflecting a return to an investor for the management of similar investment portfolios.

3.13 "**Mineable natural resource**" means a natural resource which is so situated that it may be mined using generally accepted mining practices and suitable equipment. The condition of mineability presupposes that the resource is under lease and is being or is about to be mined.

3.14 "**Mined-out**" means a natural resource, or any portion thereof, determined to be depleted by prior mining operations.

3.15 "**Mining operation**" means an enterprise, permitted by the West Virginia Office of Miner's Health, Safety and Training/Office of Mining and Reclamation, which is engaged in actively obtaining or preparing to obtain a natural resource or its by-products from the earth's crust by underground, surface and auger mines. Each mining operation may have more than one (1) area designated as "Active Mining Property," as defined in this Section.

3.16 "**Multiplier**" means the "Present Worth of One (1) Per Period" for the life of the mining operation, as defined in this Section, employing the capitalization rate established in Section 4 of this rule, as determined by a standard mid-year life Inwood Table.

3.17 "**Nonliquidity rate**" means a rate reflecting a return to an investor representing the loss of interest on an investment arising from the time required to sell the investment.

3.18 "**Operator**" means an individual, partnership, corporation or other enterprise that is engaged in actively obtaining or preparing to obtain a natural resource or its by-products from the earth's crust in an active mining property.

3.19 "**Property tax component**" means a rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the economic life of an investment.

3.20 "**Recapture component**" means a rate reflecting a provision for returning to an investor a sum of money equal to his or her investment.

3.21 "**Reserves**" means the natural resource acres or portions of those acres, which: contain the mineable natural resources; are within a permitted mining property; and, are not within the active mining portion of the property.

3.22 "**Risk rate**" means a rate reflecting a return to an investor necessary to attract capital to an investment containing a possible loss of principal and/or interest.

3.23 "**Royalty rate**" means the rates determined annually by the Tax Commissioner which reflect the current market royalty rates for willing buyer-willing seller transactions for each of the natural resources and types of mining operations derived in

Section 4 of this rule. The royalty rates are considered to be paid to each owner of a natural resource estate for all actively mined resources.

3.24 **"Safe rate"** means a rate reflecting a return to an investor on an investment which has little, if any, likelihood of loss of either principal or anticipated return on investment.

3.25 **"Summation discount component"** means a discount rate expressed as the aggregate of a safe rate, risk rate, nonliquidity rate, and management rate, adjusted for inflation.

3.26 **"Thickness"** means the measurement of all the visible natural resource, including any thinner resource beds seen above or below the main bed that comprise part of what is generally understood to be a logical mining unit. The thickness used in calculating the annual acres mined are set forth in Section 4 of this rule.

3.27 **"Tons per acre foot"** means the weight, in tons, of a relatively clean resource one foot in thickness and covering one acre. Appendix A, Formula 2, in this rule contains the method for calculating "tons per acre foot." From this formula, the following in-place tons per acre-foot (resource density) figures shall be used:

Limestone = 3,600 tons per acre foot (2.65 lbs. resource/ 1 lb. water)  
Sandstone = 3,400 tons per acre foot (2.50 lbs. resource/ 1 lb. water)  
Clay and Shale = 3,250 tons per acre foot (2.39 lbs. resource/ 1 lb. water)  
Sand and Gravel = 2,400 tons per acre foot (1.77 lbs. resource/ 1 lb. water)  
Salt = 2,950 tons per acre foot (2.17 lbs. resource/ 1 lb. water)

3.28 **"Unmineable natural resource"** means a natural resource which is not a mineable natural resource as defined in this Section 3.

#### **§ 110-1K-4. Valuation methods.**

##### **4.1 Method for determining value of active mining property.**

4.1.1 **General.** -- The value of Active Mining Property is the value per active acre multiplied by the amount of active acres. In no case shall the active mining property be valued at less than its value as reserve property.

4.1.2 **Determination of active mining property.** -- The designation of "Active Mining Property" is determined as follows:

4.1.2.a An Operator may designate or assign a portion of a parcel to an Active Mining Property when only that portion is suitable for mining purposes. For determining the actual area of the Active Mining Property, the operator shall include all contiguous parcels or portions of parcels containing the mineable natural resource(s) which are under lease, regardless of ownership. Parcels that are not leased or owned and that fall within the mining portion of the Active Mining Property shall have the requisite mineable resource valued at the applicable reserve rate for the life of the mining operation.

4.1.2.b For purposes of determining the actual area of the active mining property, the operator shall treat all contiguous parcels or portions of parcels containing the mineable natural resource(s) that are under lease, regardless of ownership, as active mining property. If more than one (1) natural resource is being mined under a permit, each natural resource represents a separate active mining property.

4.1.2.c If the permitted operation has not begun production by the July 1st assessment date, the operator shall report the mineable natural resource(s) on an active property return and value them as reserves for the applicable tax year. Once a parcel or a portion of a parcel has been assigned to or designated as an active mining property, the parcel, or portion of the parcel, shall continue to be listed on the active return, filed annually, until such time as the permit has been retired.

4.1.2.d Should the mining operation cease production after January 1st but prior to July 1st of the most recent calendar year preceding the July 1st assessment date, and there is mineable natural resource(s) remaining, the remainder shall be valued at the reserve rate for the current tax year.

4.1.2.e Any permitted mining operation producing only one (1) natural resource shall be designated as "Active Mining Property". If the mining operation is producing more than one (1) natural resource, each natural resource shall be designated as an "Active Mining Property".

4.1.2.f If the mining operation is producing a natural resource at different locations, portals and/or faces under one (1) specific permit, that operation shall be designated as one (1) "Active Mining Property". If the production of the natural resource involves different mining techniques (surface, auger or deep mining method), or if mining sites are separate and generally independent, then those sites shall be designated as separate "Active Mining Properties".

4.1.2.g For use in this rule, the maximum active mining portion for each natural resource is fifteen (15) years multiplied by the annual acres mined, except for salt. The active mining portion around each salt production well is a maximum of thirty-five

(35) acres. After a well's first year of production, active mining property shall be derived by subtracting acres mined from the thirty-five (35) acres.

4.1.2.h If the available mineable acreage of the natural resource being mined is less than the maximums listed in the foregoing subdivision 4.1.2.g, the total available acreage may be considered for designation as active mining property.

**4.1.3 Determination of average annual production** -- Average annual production, as defined in Section 3 of this rule, is determined as follows:

4.1.3.a An arithmetic mean shall be calculated on tonnage by the producer and verified by the Tax Commissioner through research of the West Virginia Office of Miner's Health, Safety and Training and/or audit-derived information for the three (3) most recent calendar years preceding the July 1st assessment date.

4.1.3.b If there was no production in either the second (2nd) and/or third (3rd) most recent calendar years, an arithmetic mean of the available year(s) production shall be used.

**4.1.4 Value per active acre** -- Application of the valuation formula for active mining property shall be based on the actual quantity of resource produced and sold. Factors to be used for the specific active mining property are: resource thickness in feet (Thk); tons per acre foot (Appendix A, Formula 2); Clean Resource Recovery Rate (RR%); Royalty Rate (Roy%); net present value Multiplier (M); and, Mine Life in years (ML). See Appendix A, Formula 3 of this rule for the formula to determine the value per active acre.

**4.1.5 Thickness (ft).** -- As defined in Section 3 of this rule, thickness is determined as follows:

4.1.5.a An arithmetic mean shall be taken of thickness as reported by producers and verified by the Commissioner through research of West Virginia Office of Miner's Health, Safety, and Training records and/or audit-derived information for the three (3) most recent calendar years prior to the July 1st assessment date.

4.1.5.b If there has been no production in either the second and/or third most recent calendar years, an arithmetic mean of the available years shall be used.

**4.1.6 Royalty rate.** -- For use in the formula prescribed by this rule, the royalty rates shall be determined for each natural resource and types of mining operations. These royalties shall include specific rates for:

- 4.1.6.a limestone/dolomite mines;
- 4.1.6.b sandstone (industrial) and/or aggregate mines;
- 4.1.6.c clay and/or shale surface mines;
- 4.1.6.d clay and/or shale underground mines;
- 4.1.6.e sand and gravel surface mines; and
- 4.1.6.f salt brine wells.

Royalty rates shall be established annually by the Tax Commissioner after review of both recorded and unrecorded, willing seller-willing buyer natural resource property leases that have occurred in the State of West Virginia during at least the five (5) calendar years prior to the appraisal date, and through inspection of other appropriate information. This review shall place a greater emphasis on information from leases transacted during the most recent years. For those natural resources involved in few or no recorded lease agreements, the Tax Commissioner shall derive a royalty rate through surveys conducted by his or her staff, data provided by the other pertinent State agencies, and other appropriate information as may be made available from the specific natural resource producers. The Tax Commissioner shall maintain this summary report of royalty rates and file the results in the State Register on or before July 1st of each year; shall accept written public comment on the tentative values until August 1st of each year; and, shall file final royalty rates in the State Register on or before September 1st of each year. From this data, the Tax Commissioner shall select the royalty rates that best typify transactions. In order to convert percentage royalty rates into specific value per ton rates, the Tax Commissioner shall, if necessary, conduct a review of the specific natural resource selling prices in West Virginia by requesting the selling prices from private purchasers, the State Department of Highways, and the West Virginia Geological and Economic Survey, as well as other informative sources available, and select specific selling price rates based on prices best typifying activity in each appraisal year. The selected selling prices per ton when multiplied by the percentage royalty rate shall result in a royalty price per ton.

**4.1.7 Capitalization rate.** -- A single statewide capitalization rate for other mined natural resources shall be determined annually by the Tax Commissioner through the use of generally accepted methods of determining these rates. The rate shall be based on the assumption of a level, non-inflating income series. The capitalization rate used to value other mined natural resources shall be developed considering a discount rate determined by the summation technique.

4.1.7.1 **Discount component** -- The summation technique shall be used in developing a discount component of the capitalization rate. The five subcomponents of the discount rate are:

4.1.7.1.a **Safe rate** -- The safe rate shall reflect a rate of return that an investor could expect on an investment of minimal risk. It shall be developed through review of interest rates offered on thirteen-week United States Treasury Bills for a period of three (3) calendar years prior to the appraisal date.

4.1.7.1.b **Nonliquidity rate** -- The nonliquidity rate shall be developed through an annual study to determine a reasonable estimate of time that natural resource property, when offered for sale, remains on the market. The time determined shall be used to identify United States Treasury Bills with similar time differentials in excess of thirteen-week Treasury Bills. The interest differential between these securities shall be used to represent the nonliquidity rate. For example, if it is determined that other natural resource property remains on the market for an average of nine months (39 weeks) before being sold, the nonliquidity rate shall be derived by taking the rate on one (1) year Treasury Bills minus the rate on thirteen-week Treasury Bills.

4.1.7.1.c **Risk rate** -- The relative degree of risk of an investment in other natural resource property is difficult to determine from published interest rates. Interest rates required on loans for acquisition and/or development of other natural resource properties shall be calculated by adding two percent (2%) to the Prime Rate Charged By banks as published in the Economic Indicators Prepared By The Council Of Economic Advisors For The Joint Economic Committee for each of the three calendar years prior to the July 1 assessment date. The three year average shall be compared to interest rates offered on thirteen-week United States Treasury Bills for the same three (3) calendar year period. The difference between the two, combined with bands of investment analysis, shall be used as a basis to estimate the risk rate.

4.1.7.1.d **Management rate** -- The management rate represents the cost of managing the investment, not the cost of managing the other natural resource property. Because the management rate has historically been one-half of one percent (0.5%) of the value of investment portfolios, for purposes of determining the discount component the management rate shall be one-half of one percent (0.5%).

4.1.7.1.e **Inflation rate (negative)** -- Nominal interest rates, including the "safe rate" mentioned, are higher than real rates by an amount representing expectation of future inflation. However, net annual income from other natural resource property is to be estimated assuming level future royalties (no inflation). The capitalization rate must be a real rate, net of expectation of inflation. The inflation rate shall be

estimated through analysis of the most recent three (3) calendar year's urban consumer price index as determined by the United States Department of Labor, Bureau of Labor Statistics.

4.1.7.2 In determining the discount component of the capitalization rate, the Tax Commissioner shall deduct the inflation rate from the sum of the safe rate, nonliquidity rate, risk rate, and management rate.

4.1.7.3 **Property tax component** -- This component shall be estimated by multiplying the assessment rate by the statewide average of tax rates for Class III property. At the present time, research indicates that royalty rates on other natural resources include a component for property tax, with no additional compensation from the producer. As a result, the property tax component shall be used in the capitalization rate. If this described general practice changes and property taxes are paid as additional compensation, the use of this component shall be deleted.

4.1.7.4 **Results of capitalization rate summary** -- The data used for development of components referenced in Paragraph 4.1.9.1 of this rule shall be reported and filed annually by the Tax Commissioner in the State Register on or before July 1st of each year. Public comment on the tentative results shall be accepted until the subsequent August 1st, and the final results shall be filed in the State Register on or before September 1st of each year.

4.2 **Valuation of reserves.** -- Reserve valuation rates for limestone, sandstone, clay and shale, sand and gravel, and salt shall be determined annually by the Tax Commissioner after review of recorded willing seller-willing buyer natural resource, production-specific, property sales that have occurred in the State of West Virginia during at least the five (5) calendar years prior to the July 1st appraisal date, through inspection of other appropriate information, and from quantitative data that might reflect current market values. This review shall place a greater emphasis on the most current data. For those natural resource properties involved in few or no recorded sale agreements, the Tax Commissioner may also derive the valuation through reviews conducted by his or her staff, data provided by other State agencies, and other appropriate information as may be made available by the specific natural resource producers involved. The Tax Commissioner: shall maintain this review of natural resource property sales and file summarized results in the State Register on or before July 1st of each year; shall accept written public comment on the tentative valuations until the subsequent August 1st; and shall file the final valuations for each natural resource in the State Register on or before September 1st of each year.

**4.3 Valuation of unmineable other natural resource properties.** -- Properties in this category are valued at one dollar (\$1.00) per acre.

**4.4 Valuation of mined-out other natural resource properties.** -- Properties in this category are valued at one dollar (\$1.00) per acre.

**4.5 Valuation of barren other natural resource properties.** -- Properties in this category are valued at one dollar (\$1.00) per acre.

**4.6 Total other natural resource valuation.** -- The total other natural resource valuation for any parcel shall involve the value for all active acres, all reserve acres, all unmineable acres, all mined out and all barren acreage.

**4.7 Leasehold interests.** -- This rule generally attributes the value of the natural resource to the owner of the natural resource property. In those circumstances where the owner of the property is subject to a lease requiring the owner to permit mining at royalty rates substantially below current market values, the owner may petition the Tax Commissioner, to attribute a portion of the value of the natural resource determined by this formula to the leaseholder.

**4.8 Farm properties.** -- The natural resource rights that are part of a "fee" estate where the use of the surface has qualified for farm use appraisal shall be valued as described in 110 C.S.R. 1A, Valuation of Farmland and Structures Situated Thereon For Ad Valorem Property Tax Purposes.

**4.9 Property reports.** -- On or before September 1st of each year the producer shall file an Annual Appraisal Report for Production of Other Mined Minerals with the Tax Commissioner with acknowledgement to the natural resource owners and the county assessors in the counties where the mines is located. On or before September 16th of each year the natural resource owner of any property that is part of a permitted mining operation shall file an Annual Appraisal Return for Reserve Mineral Properties with the Tax Commissioner. Owners of natural resource properties may file an Annual Appraisal Return for Reserve Mineral Properties, on or before September 16th, with the Tax Commissioner; otherwise, the properties shall be valued using the best available information.

**4.10 Confidentiality** -- All information provided by or on behalf of a natural resources property owner or by or on behalf of an owner of an interest in natural resources property to any state or county representative for use in the valuation or assessment of natural resources property or for use in the development or maintenance of a legislatively funded mineral mapping or geologic information system is confidential. The information is

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exempt from disclosure under provisions of West Virginia Code § 29B-1-4, and shall be kept, held, and maintained confidential except to the extent the information is needed by the State Tax Commissioner to defend an appraisal challenged by the owner or lessee of the natural resources property subject to the appraisal: Provided, That this section may not be construed to prohibit publication or release of information generated as part of the minerals mapping or geologic information system, whether in the form of aggregated statistics, maps, articles, reports, professional talks, or otherwise presented in accordance with generally accepted practices and in a manner so as to preclude the identification or determination of information about particular property owners.

**§ 110-1K-5. Severability.**

5.1 If any provision of this rule or the application of this rule to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of the provisions to other persons or circumstances shall not be affected by the holding.

**APPENDIX A**  
Formula 1

$$\text{Annual acres mined} = \frac{\text{Average Annual Production}}{(\text{Thk}) \times (\text{___ tons/ac. ft.}) \times (\text{RR})}$$

Formula 2

$$\text{Tons/ac.ft.} = \frac{(62.4 \text{ lbs.water/ft}^3) \times (\text{___ lbs.resource/1 lb.water}) \times (43,560 \text{ ft}^2/\text{acre}) \times (1 \text{ ft thickness})}{2000 \text{ lbs./ton}}$$

Formula 3

$$\$/\text{ac} = \frac{(\text{Thk}) \times (\text{___ tons/ac. ft.}) \times (\text{RR}) \times (\text{Roy}) \times (\text{M})}{\text{ML}}$$