

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 484

(SENATORS McCABE, PREZIOSO, FANNING, BOLEY, PLYMALE, K. FACEMYER, WELLS AND MINARD,
original sponsors)

[Passed April 11, 2009; in effect ninety days from passage.]

AN ACT to amend and reenact §11-3-1, §11-3-2a, §11-3-10, §11-3-12, §11-3-15, §11-3-19, §11-3-24, §11-3-24a and §11-3-25 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto eleven new sections, designated §11-3-15a, §11-3-15b, §11-3-15c, §11-3-15d, §11-3-15e, §11-3-15f, §11-3-15g, §11-3-15h, §11-3-15i, §11-3-25a and §11-3-32; and to amend said code by adding thereto a new article, designated §11-6J-1, §11-6J-2, §11-6J-3, §11-6J-4, §11-6J-5, §11-6J-6 and §11-6J-7, all relating to taxation of real and personal property for ad valorem property tax purposes; making technical corrections in certain code sections; accelerating date for issuance of notices of increase in assessed value of real property; updating forfeiture penalties for failure to file required property tax reports

and returns; clarifying report and return filing requirements; accelerating due dates for filing reports and returns; requiring assessors to notify owners of commercial business personal property of increases in assessed values for current assessment year by an established deadline; providing procedures for property owners to protest notices of assessed valuation; providing procedures for obtaining appropriate adjustments from county assessors; providing for appeal of protested assessments to county board of equalization and review and circuit court; providing for protest of classification or taxability to Tax Commissioner; providing methods for assessment of industrial property and natural resources property; establishing time and basis for assessments; providing for pertinent definitions; specifying form and manner of making returns; establishing criminal penalties for failure to file; providing for tentative appraisals by Tax Commissioner and notification to taxpayers; providing procedures for informal review of tentative appraisals; making of final appraisals; transmitting final appraisals to assessors; providing for appeals; authorizing reductions of assessments upon instruction of Tax Commissioner in certain circumstances; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

That §11-3-1, §11-3-2a, §11-3-10, §11-3-12, §11-3-15, §11-3-19, §11-3-24, §11-3-24a and §11-3-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto eleven new sections, designated §11-3-15a, §11-3-15b, §11-3-15c, §11-3-15d, §11-3-15e, §11-3-15f, §11-3-15g, §11-3-15h, §11-3-15i, §11-3-25a and §11-3-32; and that said code be amended by adding thereto a new article, designated §11-6J-1, §11-6J-2, §11-6J-3, §11-6J-4, §11-6J-5, §11-6J-6 and §11-6J-7, all to read as follows:

ARTICLE 3. PROPERTY TAX ASSESSMENTS GENERALLY.

§11-3-1. Time and basis of assessments; true and actual value; default; reassessment; special assessors; criminal penalty.

(a) All property, except public service businesses assessed pursuant to article six of this chapter and industrial property and natural resources property assessed pursuant to article six-j of this chapter and section ten, article one-c of this chapter, shall be assessed annually as of July 1 at sixty percent of its true and actual value, that is to say, at the price for which the property would sell if voluntarily offered for sale by the owner thereof, upon the terms as the property, the value of which is sought to be ascertained, is usually sold, and not the price which might be realized if the property were sold at a forced sale.

(b) Any conflicting provisions of subsection (a) of this section notwithstanding, the true and actual value of all property owned, used and occupied by the owner thereof exclusively for residential purposes shall be arrived at by giving primary, but not exclusive, consideration to the fair and reasonable amount of income which the same might be expected to earn, under normal conditions in the locality wherein situated, if rented: *Provided*, That the true and actual value of all farms used, occupied and cultivated by their owners or bona fide tenants shall be arrived at according to the fair and reasonable value of the property for the purpose for which it is actually used regardless of what the value of the property would be if used for some other purpose; and that the true and actual value shall be arrived at by giving consideration to the fair and reasonable income which the same might be expected to earn under normal conditions in the locality wherein situated, if rented: *Provided, however*, That nothing herein shall alter the method of assessment of lands or minerals owned by domestic or foreign corporations.

(c) The taxes upon all property shall be paid by those who are the owners thereof on the first day of the assessment year whether it be assessed to them or others.

(d) If at any time after the beginning of the assessment year, it be ascertained by the Tax Commissioner that the

assessor, or any of his or her deputies, is not complying with this provision or that they have failed, neglected or refused, or is failing, neglecting or refusing after five days' notice to list and assess all property therein at sixty percent of its true and actual value as determined under this chapter, the Tax Commissioner may order and direct a reassessment of any or all of the property in any county, district or municipality, where any assessor, or deputy, fails, neglects or refuses to assess the property in the manner herein provided. And, for the purpose of making assessment and correction of values, the Tax Commissioner may appoint one or more special assessors, as necessity may require, to make assessment in any county and any such special assessor or assessors, as the case may be, has the power and authority now vested by law in assessors, and the work of such special assessor or assessors shall be accepted and treated for all purposes by the county boards of review and equalization and the levying bodies, subject to any revisions of value on appeal, as the true and lawful assessment of that year as to all property valued by him or her or them. The Tax Commissioner shall fix the compensation of all special assessors appointed, which, together with their actual expenses, shall be paid out of the county fund by the county commission of the county in which any such assessment is ordered, upon the receipt of a certificate of the Tax Commissioner filed with the clerk of the county commission

showing the amounts due and to whom payable, after such expenses have been audited by the county commission.

(e) Any assessor who knowingly fails, neglects or refuses to assess all the property of his or her county, as herein provided, shall be guilty of malfeasance in office and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500, or imprisoned not less than three nor more than six months, or both, in the discretion of the court, and upon conviction, shall be removed from office.

(f) For purposes of this article, the following terms have the meaning ascribed to them in this section unless the context in which the term is used clearly indicates that a different meaning is intended by the Legislature:

(1) "Assessment year" means the twelve-month period that begins on July 1 of the year preceding the tax year: *Provided, That in the case of industrial or natural resources property appraised by the Tax Commissioner, "assessment year" means the twelve-month period that begins on the first day of January of the year preceding the tax year.*

(2) "Tax year" or "property tax year" means the calendar year in which property taxes for that tax year are first due to be paid.

(3) "Taxpayer" means the owner and any other person in whose name the taxes on the subject property are assessed.

§11-3-2a. Notice of increased assessment required for real property; exceptions to notice.

(a) If the assessor determines the assessed valuation of any item of real property appraised by him or her is more than ten percent greater than the valuation assessed for that item in the last tax year, the increase is \$1,000 or more and the increase is entered in the property books as provided in section nineteen of this article, the assessor shall give notice of the increase to the person assessed or the person controlling the property as provided in section two of this article. The notice shall be given on or before January 15 of the tax year and advise the person assessed or the person controlling the property of his or her right to appear and seek an adjustment in the assessment: *Provided*, That this notification requirement does not apply to industrial or natural resources property appraised by the Tax Commissioner under article six-j of this chapter which is assessed at sixty percent of its appraised value as determined by the Tax Commissioner. The notice shall be made by first-class United States postage mailed to the address of the person assessed or the person controlling the property for payment of tax on the item in the previous year, unless there was a general increase of the entire valuation in any one or more tax districts in which case the notice shall be by publication of the notice by a Class II-0 legal advertisement in compliance with the

provisions of article three, chapter fifty-nine of this code. The area for the publication is the county. The requirement of notice under this section is satisfied and waived if personal notice of the increase is shown by:

(1) The taxpayer having signed the assessment form after it had been completed showing the increase;

(2) Notice was given as provided in section three-a of this article; or

(3) The person assessed executing acknowledgment of the notice of the increase.

(b) During the initial reappraisal of all property under section seven, article one-c of this chapter, the Tax Commissioner and each county assessor shall send every person owning or controlling property appraised by the Tax Commissioner or the county assessor a pamphlet which explains the reappraisal process and its equalization goal in a detailed yet informal manner. The Property Valuation Training and Procedures Commission, created under section three, article one-c of this chapter, shall design the pamphlet for use in all counties while allowing individual county information to be included if it determines that the information would improve understanding of the process.

§11-3-10. Failure to list property, etc.; collection of penalties and forfeitures.

(a) If any person, firm or corporation, including public service corporations, whose duty it is by law to list any real estate or personal property for taxation, refuses to furnish a proper list thereof or refuse to list within the time required by law, or if any person, firm or corporation, including public service corporations, refuses to answer or answers falsely any question asked by the assessor or by the Tax Commissioner, or fails or refuses to deliver any statement required by law, the person, firm or corporation may forfeit, at the discretion of the assessor or the Tax Commissioner for good cause shown, \$25 for a first failure or refusal; \$50 for a second failure or refusal; and \$100 for a third and each subsequent failure or refusal and for each third or subsequent failure or refusal the person, firm or corporation shall be denied all remedy provided by law for the correction of any assessment made by the assessor or by the Board of Public Works.

(b) If any person, firm or corporation, including public service corporations, required by law to make return of property for taxation, whether the return is to be made to the assessor, the Board of Public Works, or any other assessing officer or body, fails to return a true list of all property which should be assessed in this state, the person, firm or corporation, in addition to all other penalties provided by law, shall forfeit one percent of the value of the property not yet returned and not

otherwise taxed in this state.

(c) A forfeiture as to all property aforesaid may be enforced for any default occurring in any year not exceeding five years immediately prior to the time the default is discovered.

(d) Each failure to make a true return as herein required constitutes a separate offense, and a forfeiture shall apply to each of them, but all forfeitures, to which the same person, firm or corporation is liable, shall be enforced in one proceeding against the person, firm or corporation, or against the estate of any deceased person, and may not exceed five percent of the value of the property not returned that is required to be returned for taxation by this chapter.

(e) Forfeitures shall be collected as provided in article two, chapter eleven-a of this code, the same as any tax liability, against the defaulting taxpayer, or in case of a decedent, against his or her personal representative. The sheriff shall apportion such fund among the state, county, district, school district and municipalities which would have been entitled to the taxes upon the property if it had been assessed, in proportion to the rates of taxation for each levying unit for the year in which the judgment was obtained bears to the sum of rates for all.

(f) When the list of property returned by the appraisers of the estate of any deceased person shows an amount greater than

the last assessment list of real and tangible personal property of the deceased person next preceding the appraisal of his or her estate, it is *prima facie* evidence that the deceased person returned an imperfect list of his or her property: *Provided*, That any person liable for the tax, or his or her personal representative, may always be permitted to prove by competent evidence that the discrepancy between the assessment list and the appraisal of the estate is caused by a difference of valuation returned by the assessor and that made by the appraisers of the same property or by property acquired after assessment, or that any property enumerated in the appraisers' list had been otherwise listed for taxation, or that it was not liable for taxation.

(g) Any judgment recovered under this section is a lien, from the time of the service of the notice, upon all real estate and personal property of the defaulting taxpayer, owned at the time or subsequently acquired, in preference to any other lien.

§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 September 1, 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 property subject to taxation in this state is located if the corporation does not have a principal office or chief place of business in this state, showing the following items: (1) The quantity, location and fair market value of all of its real estate, and tax district or districts in which it is located; and (2) 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:

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 judgment, true in all respects; that it contains a statement of all the real estate and tangible personal property 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 the oath shall append thereto the following certificate:

Subscribed and sworn to before me by this the day of....., 20

.....

(c) The amendments to this section enacted in the year 2009 shall be effective for assessment years beginning on and after July 1, 2010.

§11-3-15. Assessment of capital used in trade or business by natural persons or unincorporated businesses.

(a) The value of the capital used by any individual or firm not incorporated, in any trade or business taxable by law, shall be ascertained in the following manner: The owner, agent or chief accountant of every trade or business, except the business of agriculture, carried on in any county of the state, shall, annually, between the first day of the assessment year and September 1 of the current year, make a written report as of the

first day of the assessment year, to the assessor, verified by his or her affidavit, showing the following matters and things:

- (1) The amount, the true and actual value and classification of all tangible personal property used in connection with the trade or business, other than that regularly kept for sale therein, including chattels real and personal;
- (2) The true and actual value and classification of all goods and property kept for sale and remaining unsold; and
- (3) The location, quantity, the true and actual value and classification of all real estate owned by the individuals or firm and used in the trade or business.

(b) The assessor shall, upon the receipt of such report, properly verified, if the assessor is satisfied with the correctness thereof, enter the real estate in the land book of the county in the tax district wherein the same is situated and assess the same with taxes, if not otherwise assessed, to the owner thereof: *Provided*, That the personal property mentioned in the report shall be entered in the personal property book of the county for assessment with taxes as follows: Items (1) and (2) shall be entered in the tax districts where they are for the greater part of the year kept of any or located; and item (3) shall be entered under their appropriate heading, in the municipality or tax district wherein the principal place of business of the individual or firm is located in this state.

(c) If the assessor is not satisfied with the correctness of the report, the assessor may proceed to ascertain a correct list of the property on which the individual or firm is liable to be assessed with taxes, and to value the same as in other cases.

(d) The person making the report shall take and subscribe an oath in substantially the following form:

I, do solemnly swear (or affirm) that the foregoing list is true and correct to the best of my knowledge; that the value affixed to the property therein listed I believe to be the true and actual value thereof; that none of the assets belonging to (here state the name of individual or firm) and used in the business of (here describe the business) have to my knowledge, since the first day of the assessment year, been converted into nontaxable securities for the purpose of evading the assessment of taxes thereon; so help me, God.

The officer administering the oath shall append thereto the following certificate:

Subscribed and sworn to before me by (here insert affiant's name) this day of, 20

§11-3-15a. Assessment of property of limited liability companies.

Limited liability companies that elect to be treated as a corporation for federal income tax purposes shall make and file the report required of corporations in section twelve of this article. Limited liability companies treated as a partnership

for federal income tax purposes shall make and file the report required of partnerships in section fifteen of this article. A limited liability company that elects to be treated as a disregarded entity for federal income tax purposes shall be treated as a disregarded entity under this article and its owner shall make and file the report required by section twelve or section fifteen of this article depending upon whether the owner is a corporation, a firm or an individual.

§11-3-15b. Notice of increase in assessed value of business personal property.

(a) On or before January 15 of the tax year, the assessor shall mail a notice of assessed value to any corporation, partnership, limited partnership, limited liability company, firm, association, company or other form of organization engaging in business activity in the county showing the aggregated assessed value of taxpayer's tangible personal property situated in the county on July 1 of the assessment year, if known, that is not appraised by the Tax Commissioner: *Provided*, That notice is only required if:

- (1) The aggregated assessed value of taxpayer's tangible personal property used in business activity is more than ten percent greater than the aggregated assessed value of the property in the prior tax year; and
- (2) The aggregated assessed value of property has increased

by more than \$100,000 since the prior tax year.

However, this notification requirement does not apply to industrial or natural resources personal property that is appraised by the Tax Commissioner under article six-j of this chapter which is assessed at sixty percent of its appraised value as determined by the Tax Commissioner.

(b) The assessor shall include in the assessment notice:

(1) The assessed value of the property for the preceding assessment year and the taxes levied on that value;

(2) The proposed assessed value of the property for the current assessment year and that taxes that may be levied on that value, assuming the levy rates are neither increased or decreased;

(3) The classification of the property pursuant to section one, article X of the constitution of this state;

(4) The mailing date of the notice; and

(5) The last date on which the taxpayer may file a petition for review with the assessor from the valuation or classification assigned to the property.

(c) The notice required by this section shall be in writing, in the form prescribed by the Tax Commissioner, and mailed to the taxpayer's last known mailing address.

(d) No later than the sixteenth day of the tax year, the assessor shall certify to the county commission and to the Tax

Commissioner the date on which all notices under this section were mailed.

(e) After the mailing date of the notice any person who owns, claims, possesses or controls property that is valued by the assessor may inquire of and be advised by the assessor as to the valuation of the property determined by the assessor.

(f) The owner or person in possession of the tangible personal property may petition the assessor for review as provided in section fifteen-d of this article.

§11-3-15c. Petition for assessor review of improper valuation of real property.

(a) A taxpayer who is of the opinion that his or her real property has been valued too high or otherwise improperly valued or listed in the notice given as provided in section two-a of this article may, but is not required to, file a petition for review with the assessor on a written form prescribed by the Tax Commissioner. This section shall not apply to industrial and natural resource property appraised by the Tax Commissioner.

(b) The petition shall state the taxpayer's opinion of the true and actual value of the property and substantial information that justifies that opinion of value for the assessor to consider for purposes of basing a change in classification or correction of the valuation. For purposes of this subsection, the taxpayer provides substantial information to justify the opinion of value

by stating the method or methods of valuation on which the opinion is based:

(1) Under the income approach, including the information required in section fifteen-e of this article;

(2) Under the market approach, including the true and actual value of at least one comparable property in the same geographic area or the sale of the subject property; or

(3) Under the cost approach, including the cost to build or rebuild the property plus the true and actual value of the land.

(c) The petition may include more than one parcel of property if they are part of the same economic unit according to the Tax Commissioner's guidelines or if they are owned by the same owner, have the same use, are appealed on the same basis and are located in the same tax district or in contiguous tax districts of the county, and are in a form prescribed by the Tax Commissioner.

(d) The petition shall be filed within five days after the date the taxpayer receives the notice of increased assessment under section two-a of this article or the notice of increased value was published as a Class II-0 legal advertisement as provided in that section.

§11-3-15d. Administrative review of tangible personal property valuation by assessor.

(a) The owner of business tangible personal property that is

valued by the assessor or the person in whose possession it is found on July 1 of the assessment year may appeal to the assessor within five days after the date the notice of increased assessment required by section fifteen-b of this article was received by filing a petition with the assessor on a form prescribed by the Tax Commissioner. The petition shall set forth in writing:

- (1) The taxpayer's opinion of the value of the tangible personal property; and
 - (2) Substantial information that justifies the opinion of value in order for the assessor to consider the information for the purpose of basing a change in the valuation.
- (b) The assessor shall rule on each petition within five days after it is filed.
- (c) The notice of the assessor's ruling provided under this section shall be given in the same manner as prescribed in section fifteen-h of this article.
- (d) If the request of the petitioner is denied, in whole or in part, the notice required by subsection (c) of this section shall include the grounds for refusing to grant the request contained in the petition.
- (e) This section shall not apply to tangible personal property appraised by the Tax Commissioner as part of an industrial or natural resources property appraisal.

§11-3-15e. Contents of petition based on income approach to value of real property.

(a) A petition that is filed with the assessor under section fifteen-c or fifteen-d of this article based on the income approach to value shall include income and expense data relating to the property for the three most recent consecutive fiscal years of the petitioner ending on or before June 30 preceding the then current assessment year. If the income and expense data is available to the petitioner, the petitioner shall file with the petition such income and expense data as is available. The Tax Commissioner, by rule, may establish additional information to be filed if the required income and expense data are not available.

(b) If a petitioner under this article uses the income approach to determine valuation, the petitioner, an officer of a corporate petitioner, a general partner or a designated agent shall file a sworn affidavit under penalty of perjury that the information contained in the petition is true and correct to the best of the petitioner's knowledge.

§11-3-15f. Rejection of petition for failure to include substantial information; amended petition; appeal.

If the assessor rejects a petition filed pursuant to section fifteen-c, fifteen-d or fifteen-e of this article, the petitioner may appeal to the county board of equalization and review as

provided in section twenty-four of this article.

§11-3-15g. Meeting between assessor and petitioner.

(a) At the petitioner's written request, the assessor or a member of his or her staff shall meet with the petitioner and the petitioner's representative, if any, at a time and place designated at least three working days in advance by the assessor after the petition is filed.

(b) If the petitioner is unable to appear and meet with the assessor at the time and place set by the assessor, the petitioner may submit written evidence to support the petition if it is submitted before the date of the meeting.

§11-3-15h. Ruling on petition.

(a) In all cases the assessor shall consider the petition and shall rule on each petition filed pursuant to section fifteen-c, fifteen-d or fifteen-e of this article by January 28 of the assessment year. Written notice shall be served by regular mail on the person who filed the petition.

(b) In considering a petition filed pursuant to section fifteen-c, fifteen-d or fifteen-e of this article, the assessor shall consider the valuation fixed by the assessor on other similar property that is similarly situated.

§11-3-15i. Petitioner's right to appeal.

(a) If the assessor grants the requested relief, the petitioner may not appeal the ruling of the assessor.

(b) If the petitioner and the assessor reach an agreement within five business days after the conclusion of the meeting held as provided in section fifteen-g of this article, both parties shall sign the agreement and both parties waive the right to further appeal.

(c) If all or part of the petitioner's request under section fifteen-c, fifteen-d or fifteen-e of this article is denied, the assessor shall mail, on the date of the ruling, to the petitioner at the address shown on the petition notice of the grounds of the refusal to make the change or changes requested in the petition. A petitioner whose request is denied, in whole or in part, or a petitioner who does not receive a response from the assessor by January 28, as provided in section fifteen-h of this article, may file a protest with the county commission sitting as a board of equalization and review, as provided in section twenty-four of this article.

§11-3-19. Property books; time for completing; extension of levies; copies.

The assessor shall complete the assessment and make up the assessor's official copy of the land and personal property books in time to submit the same to the board of equalization and review not later than February 1 of the assessment year. The assessor shall, as soon as practicable after the levy is laid,

extend the levies on the land and personal property books, and shall forthwith make three copies of the land books and two copies of the personal property books with the levies extended. One of the copies of the land books shall be delivered to the sheriff not later than June 7; one copy shall be delivered to the clerk of the county commission not later than July 1; and one copy shall be sent to the State Auditor not later than July 1. One of the copies of the personal property books shall be delivered to the sheriff and one copy shall be delivered to the clerk of the county commission on or before the same date fixed above for the delivery of the land books. The copies shall be official records of the respective officers. The assessor may require the written receipt of each of the officers. Before delivering any of the copies the assessor shall make and subscribe the following oath at the foot of each of them:

I, assessor of the county of do solemnly swear, (or affirm) that in making the foregoing assessment I have to the best of my knowledge and ability pursued the law prescribing the duties of assessors and that I have not been influenced in making the same by fear, favor or partiality; so help me, God.

.....
assessor.

The officer administering the foregoing oath shall append

thereto a certificate in substantially the following form:

Subscribed and sworn to before me, a for
the County of and State of West Virginia, by
....., assessor for said county, this the day of
....., 20.

§11-3-24. Review and equalization by county commission.

(a) The county commission shall annually, not later than the first day of February, meet as a board of equalization and review for the purpose of reviewing and equalizing the assessment made by the assessor. The board shall not adjourn for longer than three business days at a time until this work is completed and shall not remain in session for a longer period than twenty-eight days and shall not adjourn sine die before February 15.

(b) At the first meeting of the board, the assessor shall submit the property books for the current year, which shall be complete in every particular, except that the levies shall not be extended. The assessor and the assessor's assistants shall attend and render every assistance possible in connection with the value of property assessed by them.

(c) The board shall proceed to examine and review the property books, and shall add on the books the names of persons, the value of personal property and the description and value of real estate liable to assessment which was omitted by the assessor. The board shall correct all errors in the names of

persons, in the description and valuation of property, and shall cause to be done whatever else may be necessary to make the assessed valuations comply with the provisions of this chapter. But in no case shall any question of classification or taxability be considered or reviewed by the board.

(d) If the board determines that any property or interest is assessed at more or less than sixty percent of its true and actual value as determined under this chapter, it shall fix it at sixty percent of its true and actual value. But no assessment shall be increased without giving the taxpayer at least five days' notice, in writing, of the intention to make the increase and no assessment shall be greater than sixty percent of the appraised value of property valued by the Tax Commissioner.

(e) Service of notice of the increase upon the taxpayer shall be sufficient, or upon his or her agent or attorney in person, or if sent by registered or certified mail to the property owner, his or her agent, or attorney, at the last known mailing address of the person as shown in the records of the assessor or the tax records of the county sheriff. If such person cannot be found and has no last known mailing address, then notice shall be given by publication thereof as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area shall be the county. The date of the publication shall be at

least five days, not including a Saturday, Sunday or legal holiday in this state, prior to the increase. When the board intends to increase the entire valuation in any one tax district by a general increase, notice shall be given by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area shall be the county. The date of the last publication shall be at least five days, not including a Saturday, Sunday or legal holiday in this state, prior to the meeting at which the increase in valuation is ordered by the board. When an increase is made, the same valuation shall not again be changed unless notice is again given as heretofore provided.

The clerk of the county commission shall publish notice of the time, place and general purpose of the meeting as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code and the publication area shall be the county. The expense of publication shall be paid out of the county treasury.

(f) If a taxpayer fails to apply for relief at this meeting, the taxpayer shall have waived the right to ask for correction in the assessment list for the current year, and shall not thereafter be permitted to question the correctness of the list as finally fixed by the board, except on appeal to the circuit

court or as otherwise provided in this article. After the board completes the review and equalization of the property books, a majority of the board shall sign a statement that it is the completed assessment of the county for the year; then the property books shall be delivered to the assessor and the levies extended as provided by law.

§11-3-24a. Protest of classification or taxability to assessor; appeal to Tax Commissioner.

(a) At any time after property is returned for taxation and up to and including the time the property books are before the county commission sitting as a board of equalization and review, any taxpayer may apply to the assessor for information regarding the classification and taxability of the taxpayer's property. In case the taxpayer is dissatisfied with the classification of property assessed to the taxpayer or believes that the property is exempt or otherwise not subject to taxation, the taxpayer shall file objections in writing with the assessor. The assessor shall decide the question by either sustaining the protest and making proper corrections, or by stating, in writing if requested, the reasons for refusal to grant the protest.

(b) The assessor may, and if the taxpayer requests, the assessor shall, certify the question to the Tax Commissioner in a statement sworn to by both parties, or if the parties are unable to agree, in separate sworn statements, giving a full description

of the property and any other information which the Tax Commissioner may require. The Tax Commissioner shall prescribe forms on which the aforesaid question shall be certified and the Tax Commissioner shall have the authority to pursue any inquiry and procure any information which may be necessary for the disposition of the issue.

(c) The Tax Commissioner shall, as soon as possible on receipt of the question, but in no case later than February 28 of the assessment year, instruct the assessor as to how the property shall be treated. The instructions issued and forwarded by mail to the assessor shall be binding upon the assessor, but either the assessor or the taxpayer may apply to the circuit court of the county within thirty days after receiving written notice of the Tax Commissioner's ruling, for review of the question of classification or taxability in the same fashion as is provided for appeals from the county commission sitting as a board of equalization and review in section twenty-five of this article.

(d) The amendments to this section enacted in the year 2009 shall apply to classification and taxability rulings issued for taxes levied after December 31, 2009.

§11-3-25. Relief in circuit court against erroneous assessment.

(a) Any taxpayer claiming to be aggrieved by any assessment in any land or personal property book of any county who shall have appeared and contested the valuation or whose assessment has

been raised by the county commission sitting as a board of equalization and review above the assessment fixed by the assessor may, at any time up to thirty days after the adjournment of the board, apply for relief to the circuit court of the county in which the property books are made out; but any person applying for relief in circuit court shall, before any application is heard, give ten days' notice to the prosecuting attorney of the county, whose duty it shall be to attend to the interests of the state, county and district in the matter, and the prosecuting attorney shall give at least five days' notice of hearing to the Tax Commissioner.

(b) The right of appeal from any assessment by the board, as provided in this section, may be taken either by the applicant or by the state, and in case the applicant, by his or her agent or attorney, or the state, by its prosecuting attorney or Tax Commissioner, desires to take an appeal from the decision of the board, the party desiring to take an appeal shall have the evidence taken at the hearing of the application before the board, including a transcript of all testimony and all papers, motions, documents, evidence and records as were before the board, certified by the county clerk and transmitted to the circuit court as provided in section four, article three, chapter fifty-eight of this code, except that, any other provision of this code notwithstanding, the evidence shall be certified and

transmitted within thirty days after the petition for appeal is filed with the court or judge, in vacation.

(c) If there was an appearance by or on behalf of the taxpayer before the board, or if actual notice, certified by the board, was given to the taxpayer, the appeal, when allowed by the court or judge, in vacation, shall be determined by the court from the record as so certified: *Provided*, That in cases where the court determines that the record made before the board is inadequate as a result of the parties having had insufficient time to present evidence at the hearing before the board to make a proper record, as a result of the parties having received insufficient notice of changes in the assessed value of the property to make a proper record at the hearing before the board, as a result of irregularities in the procedures followed at the hearing before the board, or for any other reason not involving the negligence of the party alleging that the record is inadequate, the court may supplement the record to make it adequate by allowing the submission of additional exhibits or additional testimony or may remand the appeal back to the county commission of the county in which the property is located, even after the county commission has adjourned sine die as a board of equalization and review for the tax year in which the appeal arose, for the purpose of developing an adequate record upon which the appeal can be decided. If, however, there was no

actual notice to the taxpayer, and no appearance by or on behalf of the taxpayer before the board, the matter shall be heard de novo by the circuit court.

(d) If, upon the hearing of appeal, it is determined that any property has been assessed at more than sixty percent of its true and actual value determined as provided in this chapter, the circuit court shall, by an order entered of record, correct the assessment, and fix the assessed value of the property at sixty percent of its true and actual value. A copy of the order or orders entered by the circuit court reducing the valuation shall be certified to the Auditor, if the order or orders pertain to real property, by the clerk within twenty days after the entering of the same, and every order or judgment shall show that the prosecuting attorney or Tax Commissioner was present and defended the interest of the state, county and district. If it be ascertained that any property has been valued too high, and that the taxpayer has paid the excess tax, it shall be refunded to the taxpayer and if not paid, the taxpayer shall be relieved from the payment thereof. If it is ascertained that any property is valued too low, the circuit court shall, by an order entered of record, correct the valuation and fix it at sixty percent of its true and actual value. A copy of any order entered by any circuit court increasing the valuation of property shall be certified within twenty days, if the order pertains to real

property, to the Auditor, the county clerk and the sheriff. However, if the order pertains only to personal property, then the copy shall be certified within twenty days to the county clerk and to the sheriff and it shall be the duty of the Auditor, the county clerk and the sheriff to charge the taxpayer affected with the increase of taxes occasioned by the increase of valuation by applying the rate of levies for every purpose in the district where the property is situated for the current year. The order shall also be filed in the office of the Auditor and clerk of the county commission. The circuit court shall review the record submitted from the board. If the court determines that the record is adequate, it shall establish a briefing and argument schedule that will result in the appeal being submitted to the court for decision within a reasonable time, but not to exceed eight months after the appeal is filed. All final decisions or orders of the circuit court shall be issued within a reasonable time, not to exceed ninety days, from the date the last brief is filed and the case is submitted to the court for decision. The state or the aggrieved taxpayer may appeal a question of valuation to the Supreme Court of Appeals if the assessed value of the property is \$50,000 or more.

§11-3-25a. Payment of taxes that become due while appeal is pending.

- (a) All taxes levied and assessed against the property for

the year on which a protest or an appeal has been filed by the taxpayer as provided in section twenty-four of this article shall be paid before they become delinquent. If the taxes are not paid before becoming delinquent, the circuit court, having jurisdiction of the appeal, as appropriate, shall dismiss the appeal unless the delinquent taxes and interest due are paid in full within thirty days after taxes for the second half of the tax year become delinquent.

(b) In the event the order of a court becomes final and the order results in an overpayment of taxes levied for the tax year that have been paid to the sheriff, the amount of the overpayment shall be refunded to the taxpayer if the overpayment is \$25,000 or less within thirty days after the decision or order becomes final. If the overpayment is more than \$25,000, a credit in the amount of the overpayment shall be established by the county sheriff and allowed as a credit against taxes owed for up to the following two tax years: *Provided*, That the county commission may elect to refund the amount of overpayment rather than having a credit established as provided in this section. Whenever an overpayment is refunded or credited under this section, the county shall pay interest at the rate established in sections seventeen and seventeen-a, article ten of this chapter for overpayments of taxes collected by the Tax Commissioner, which interest shall be computed from the date the overpayment was

received by the sheriff to the date of the refund check or the date the credit is actually taken against taxes that become due after the order of the court becomes final.

§11-3-32. Effective date of amendments.

All amendments to this article adopted in the year 2009 shall apply to the assessment years beginning on or after July 1, 2010.

ARTICLE 6J. ASSESSMENT OF INDUSTRIAL PROPERTY AND NATURAL RESOURCES PROPERTY.

§11-6J-1. Time and basis of assessments; true and actual value; and returns of property to Tax Commissioner.

(a) All industrial property and natural resources property shall be assessed annually as of January 1 of the year preceding the tax year at sixty percent of its true and actual value as determined by the Tax Commissioner under this article and under section ten, article one-c of this chapter.

(b) If required by the Tax Commissioner, all owners or operators of industrial property and natural resources property shall, on or before May 1 of each year, make a return to the Tax Commissioner and, if requested in writing by the assessor of the county where situated, to the county assessor, at a time and in the form specified by the Tax Commissioner, of all industrial property or natural resources property owned by them. Tax returns required to be filed pursuant to this section may be

filed electronically in the discretion of the Tax Commissioner. The Tax Commissioner may require the filing of all information which would be useful in valuing the property covered by the returns. Upon written application by the taxpayer filed prior to the due date of any return required to be filed by this section, the Tax Commissioner may for reasonable cause shown grant an extension of no more than one month in the due date of any return.

(c) Assessments of property interests made pursuant to this article shall not be combined with assessments of property interests having a different assessment date.

§11-6J-2. Definitions.

As used in this article:

(1) "Active coal mining property" means a mineable bed of coal on a property or portion of a property involved in a permitted mining operation. Each and every bed of coal being mined in a permitted mining operation is a separate active mining property.

(2) "Industrial property" means the real and personal property integrated as a functioning unit intended for the assembling, processing and manufacturing of finished or partially finished products.

(3) "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 its 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 it is certified as managed timberland by the Division of Forestry.

(4) "Natural gas-producing property" means the property from which natural gas has been produced or extracted at any time during the calendar year preceding January 1 assessment date. Natural gas-producing property includes the property interest or interests underlying an area of up to one hundred twenty-five acres of surface per well for property with active wells on the parcel.

(5) "Natural resources property" means any of the following: Active coal mining property, reserve coal property, natural gas-producing property, oil-producing property, managed timberland or other natural resources property.

(6) "Oil-producing property" means property from which oil has been produced or extracted at any time during the calendar year preceding January 1 assessment date. Oil-producing property includes the interest or interests underlying an area of up to forty acres of surface per well with one or more active wells on the parcel.

(7) "Operator" means an individual, limited liability

company, partnership, corporation, joint venture or other enterprise which proposes to or does locate, drill, produce, manage or abandon any oil and/or natural gas well or which is engaged in actively obtaining or preparing to obtain coal and/or its by-products from the earth's crust on an active coal mining property.

(8) "Reserve coal property" means any property for which coal rights are part of the owned estate and which is not part of an active coal mining property.

§11-6J-3. Form and manner of making return; failure to timely make return; penalties.

(a) All returns required to be made to the Tax Commissioner under this article shall be made in conformity with any reasonable requirements of the Tax Commissioner of which the person making the return shall have had notice, and shall be made upon forms prescribed by the Tax Commissioner who is invested with full power and authority to prescribe the forms as will be required from any owner, operator or producer that may be of use to the Tax Commissioner in determining the true and actual value of the properties of the owners, operators or producers.

(b) All returns shall be signed and sworn to by the owner, operator or producer if a natural person, or, if the owner, operator or producer shall be a limited liability company, corporation, partnership, joint venture or other enterprise,

shall be signed and sworn to by its president, vice president, secretary or other individual authorized to act on behalf of the taxpayer.

(c) If any owner, operator or producer fails to make a return within the time required by section one of this article, it shall be the duty of the Tax Commissioner to take steps as necessary to compel compliance and to enforce any and all penalties imposed by law for failure to do so.

(d) Any owner, operator or producer, whether a natural person, limited liability company, corporation, partnership, joint venture or other enterprise, failing to make a return as herein required shall be guilty of a misdemeanor and, upon conviction thereof, fined \$100 for each month the failure continues. In addition, any penalties provided for in this chapter or elsewhere in this code relating to failure to list any property or to file any return or report for ad valorem taxation purposes may be applied to any owner of property required to make a return pursuant to this section.

§11-6J-4. Review of returns; procuring information for tentative appraisals; tentative appraisals by Tax Commissioner; and notification to taxpayers.

(a) All returns delivered to the Tax Commissioner shall be examined by him or her, and if found insufficient in form or in any respect defective, imperfect or not in compliance with law,

he or she shall compel the person required to make it to do so in proper and sufficient form and in all respects as required by law.

(b) If any owner, operator or producer fails to make a required return, the Tax Commissioner shall proceed to obtain the facts and information required to be furnished by the returns.

(c) For the purposes of ascertaining the correctness of any return filed pursuant to this article and/or of valuing the property of any industrial taxpayer or natural resources property owner or operator, the Tax Commissioner may exercise all of the powers and authority granted to him or her by sections five-a, five-b and five-c, article ten of this chapter.

(d) Using information provided on the returns and all other pertinent evidence, information and data he or she has been able to procure, the Tax Commissioner shall annually value and make tentative appraisals of all industrial property and natural resources property as provided in section ten, article one-c of this chapter.

(e) On or before September 15 of each year, the Tax Commissioner shall complete the preparation of tentative appraisals of all industrial property and natural resources property and shall notify the owner or operator affected thereby of the amount of such tentative appraisals. Notification may, at the reasonable discretion of the Tax Commissioner, be: (1) By

written notice deposited in the United States mail, addressed to the owner or operator at the principal office or place of business of the owner or operator; (2) by electronic notification; or (3) by any other means designed to communicate the tentative appraisal information to the owner or operator in a timely and efficient manner and in a convenient useable form. The Tax Commissioner shall retain in his or her office true copies of tentative appraisals and of the underlying work sheets used to compute the tentative appraisals, all of which shall be available for inspection by any owner or operator or his or her duly authorized representative.

§11-6J-5. Informal petition to Tax Commissioner for review of tentative appraisals.

(a) A taxpayer who is of the opinion that the tentative appraisal of its industrial property or natural resources property does not reflect the true and actual value of the property or otherwise improperly valued property may, after receiving its tentative appraisal and on or before November 1 of the year preceding the assessment year, informally petition the Tax Commissioner requesting a review of the tentative appraisal. The Tax Commissioner may require the petition be made on a written form prescribed by the Tax Commissioner.

(b) At the petitioner's request, the Tax Commissioner or his or her representative shall meet with the petitioner and/or the

petitioner's representative, if any, to discuss the petition at a time and place designated at least five working days in advance by the Tax Commissioner after the petition is filed. If the petitioner is unable to appear and meet with the Tax Commissioner at the time and place set by the Tax Commissioner, the petitioner may submit written evidence to support the petition if it is submitted before the date of the meeting.

(c) The Tax Commissioner shall consider and rule on each informal petition filed under this section on or before December 15 of the year preceding the assessment year. If the Tax Commissioner agrees with the petition he or she shall modify the tentative appraisal accordingly. If the Tax Commissioner does not agree with the petition, he or she shall so notify the petitioner in writing.

§11-6J-6. Final appraisal of industrial property and natural resources property by Tax Commissioner; appraisals sent to assessors; appeals of Tax Commissioner's appraisals.

(a) The Tax Commissioner shall finalize the tentative appraisals made pursuant to section three of this article and make his or her final appraisals of industrial property and natural resources property on or before December 15 of the year preceding the assessment year.

(b) On or before December 15 of the year preceding the

assessment year, the Tax Commissioner shall forward each industrial property and natural resources property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate for each tax year. The Tax Commissioner shall supply supporting data that the assessor might need to evaluate the appraisal.

(c) Any taxpayer claiming to be aggrieved by any assessment made pursuant to this article may appeal the assessment as provided under the provisions of article three of this chapter: *Provided*, That if the assessment exceeds sixty percent of the final appraisal by the Tax Commissioner, the taxpayer may notify the Tax Commissioner in writing of this error, whereupon the Tax Commissioner shall, if such error is confirmed by the Tax Commissioner, instruct the assessor in writing to lower the assessment to sixty percent of the final appraisal. The assessor shall, upon receipt of such instruction from the Tax Commissioner, lower the assessment as required.

§11-6J-7. Effective date.

The provisions of this article enacted in the year 2009 shall be effective for the tax year 2011 and thereafter.