WEST virginia legislature

2021 regular session

Introduced

Senate Bill 32

By Senator Tarr

[Introduced February 10, 2021; referred
to the Committee on Finance]

A BILL to amend and reenact §11-1C-10 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §11-1C-10a; to amend and reenact §11-3-24 and §11-3-25 of said code; and to amend and reenact §11-10A-8 of said code, all relating to the valuation of natural resources property; providing an alternate method of appeal of proposed valuation natural resources property for ad valorem property tax purposes; and providing for the confidentiality of annual industry operating expenses survey information used for property tax purposes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-10. Valuation of industrial property and natural resources property by Tax Commissioner; penalties; methods; values sent to assessors.

(a) As used in this section:

~~(1)~~ “Industrial property” means real and personal property integrated as a functioning unit intended for the assembling, processing, and manufacturing of finished or partially finished products.

~~(2)~~ “Natural resources property” means coal, oil, natural gas, limestone, fireclay, dolomite, sandstone, shale, sand and gravel, salt, lead, zinc, manganese, iron ore, radioactive minerals, oil shale, managed timberland as defined in §11-1C-2 of this code, and other minerals.

(b) All owners of industrial property and natural resources property each year shall make a return to the State Tax Commissioner and, if requested in writing by the assessor of the county where situated, to such county assessor at a time and in the form specified by the commissioner of all industrial or natural resources property owned by them. The commissioner may require any information to be filed which would be useful in valuing the property covered in the return. 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 may be applied to any owner of property required to make a return pursuant to this section.

(c) The State Tax Commissioner shall value all industrial property in the state at its fair market value within three years of the approval date of the plan for industrial property required in subsection (e) of this section. The commissioner shall thereafter maintain accurate values for all such property. The Tax Commissioner shall forward each industrial property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by 60 percent and include the resulting assessed value in the land book or the personal property book, as appropriate for each tax year. The commissioner shall supply support data that the assessor might need to evaluate the appraisal.

(d) Within three years of the approval date of the plan required for natural resources property required pursuant to subsection (e) of this section, the State Tax Commissioner shall determine the fair market value of all natural resources property in the state. With regard to oil, natural gas, or both, producing property fair market value shall be determined through the process of applying a yield capitalization model to the net proceeds (gross receipts less royalties paid less operating expenses). Operating expenses shall include all operating expenses, including, but not limited to, lease operating expenses, lifting costs, gathering, compression, processing, and transportation charges, if such expenses are incurred to sell the oil or natural gas to the “point of sale”. “Point of sale” is defined as the point where the buyer of the oil or natural gas takes ownership of and assumes the responsibility for such oil or natural gas. The Tax Commissioner shall every three years, or any year in which the average of the monthly last day settle price of natural gas contracts or the average oil price traded on the New York Mercantile Exchange (NYMEX) changes more than 20 percent from that average for the year in which the last survey was completed, determine the average annual industry operating expenses per well by providing a survey to all oil, natural gas, or both, producers in the state. The survey shall solicit information pertaining to the “operating expenses” described above for the following types of wells: Conventional producing oil and gas wells, coalbed methane wells, vertical and horizontal wells in the Marcellus or Utica shale or other shale formations with the horizontal wells divided into separate well categories based upon the total lateral length of each lateral well creating a separate category of lateral well separating such wells based upon total lateral length increments of 3,000 feet. For example, one category shall contain lateral wells with a total lateral length increment between zero feet and 3,000 feet and a second category with a total lateral length increment between 3,001 feet and 6,000 feet. Such average annual industry operating expense shall be stated as a specific monetary amount for each type of well listed above. The average annual industry operating expenses for each type of well shall be deducted from the gross proceeds to develop an income stream for application of a yield capitalization model. The commissioner shall thereafter maintain accurate values for all such property.

(1) In order to qualify for identification as managed timberland for property tax purposes the owner must annually certify, in writing to the Division of Forestry, that the property meets the definition of managed timberland as set forth in this article and contracts to manage property according to a plan that will maintain the property as managed timberland. In addition, each owner’s certification must state that forest management practices will be conducted in accordance with approved practices from the publication “Best Management Practices for Forestry”. Property certified as managed timberland shall be valued according to its use and productive potential. The Tax Commissioner shall promulgate rules for certification as managed timberland.

(2) In the case of all other natural resources property, the commissioner shall develop an inventory on a county by county basis of all such property and may use any resources, including, but not limited to, geological survey information; exploratory, drilling, mining and other information supplied by natural resources property owners; and maps and other information on file with the state Department of Environmental Protection and Office of Miners’ Health, Safety, and Training. Any information supplied by natural resources owners or any proprietary or otherwise privileged information supplied by the state Department of Environmental Protection and Office of Miners’ Health, Safety, and Training shall be kept confidential unless needed to defend an appraisal challenged by a natural resources owner. Formulas for natural resources valuation may contain differing variables based upon known geological or other common factors. The Tax Commissioner shall forward each natural resources property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by 60 percent and include the resulting assessed value in the land book or the personal property book, as appropriate, for each tax year. The commissioner shall supply support data that the assessor might need to explain or defend the appraisal. The commissioner shall directly defend any challenged appraisal when the assessed value of the property in question exceeds $2 million or an owner challenging an appraisal holds or controls property situated in the same county with an assessed value exceeding $2 million. At least every five years, the commissioner shall review current technology for the recovery of natural resources property to determine if valuation methodologies need to be adjusted to reflect changes in value which result from development of new recovery technologies.

(e) The Tax Commissioner shall develop a plan for the valuation of industrial property and a plan for the valuation of natural resources property. The plans shall include expected costs and reimbursements, and shall be submitted to the property valuation training and procedures commission on or before January 1, 1991, for its approval on or before July 1 of such year. Such plan shall be revised, resubmitted to the commission, and approved every three years thereafter.

(f) To perform the valuation duties under this section, the State Tax Commissioner has the authority to contract with a competent property appraisal firm or firms to assist with or to conduct the valuation process as to any discernible species of property statewide if the contract and the entity performing such contract is specifically included in a plan required by subsection (e) of this section or otherwise approved by the commission. If the Tax Commissioner desires to contract for valuation services only in one county or a group of counties, the contract must be approved by the commission.

(g) The county assessor may accept the appraisal provided, pursuant to this section, by the State Tax Commissioner: *Provided,* That if the county assessor fails to accept the appraisal provided by the State Tax Commissioner, the county assessor shall show just cause to the valuation commission for the failure to accept such appraisal and shall further provide to the valuation commission a plan by which a different appraisal will be conducted.

(h) The costs of appraising the industrial and natural resources property within each county, and any costs of defending same shall be paid by the state: *Provided,* That the office of the state Attorney General shall provide legal representation on behalf of the Tax Commissioner or assessor, at no cost, in the event the industrial and natural resources appraisal is challenged in court.

(i) For purposes of revaluing managed timberland as defined in §11-1C-2 of this code, any increase or decrease in valuation by the commissioner does not become effective prior to July 1, 1991. The property owner may request a hearing by the director of the Division of Forestry, who may thereafter rescind the disqualification or allow the property owner a reasonable period of time in which to qualify the property. A property owner may appeal a disqualification to the circuit court of the county in which the property is located.

§11-1C-10a. Confidentiality of annual industry operating expenses survey information.

(a) Financial information and other data of oil and natural gas producers disclosed to the Tax Commissioner pursuant to the average annual industry operating expenses survey required under §11-1C-10 of this code shall be considered confidential and exempt from §29B-1-1 *et seq*. of this code.

(b) Any information disclosed to the Tax Commissioner pursuant to the survey required under §11-1C-10 of this code shall have the confidentiality protections given to a return under §11-10-5d of this code and any disclosure of such information not authorized by this section shall be subject to the penalties provided for unlawful disclosure of a return. The term “return”, for purposes of this section, shall have the meaning set forth in §11-10-5d of this code.

(c) Notwithstanding any provision of this code to the contrary, the Tax Commissioner shall annually provide a report with nonproprietary financial information and other data disclosed by oil and natural gas producers pursuant to the survey required by §11-1C-10 of this code to the Joint Committee on Government and Finance on or before September 30 of each year. The Tax Commissioner shall provide a report to the Joint Committee on Government and Finance explaining in detail how he or she calculated the average annual industry operating expenses described under §11-1C-10 of this code. The Tax Commissioner’s detailed explanation of his or her calculations of average annual industry operating expenses shall be broken down by the well types referenced in §11-1C-10 of this code, including conventional producing oil and gas wells, coalbed methane wells, vertical and horizontal wells in the Marcellus or Utica shale or other shale formations. As referenced in §11-1C-10 of this code, the information for horizontal wells shall be further divided into separate well categories based upon the total lateral length of each lateral well creating a separate category of lateral well separating such horizontal wells based upon total lateral length increments of 3,000 feet. The Tax Commissioner’s detailed explanation shall demonstrate how the specific monetary amount for each type of well was calculated and shall include the financial information and other data submitted by each individual producer, without including any proprietary information or other identifying information about the oil and natural gas producers that submitted surveys.

Any disclosure of financial information or other data provided to the Tax Commissioner pursuant to the survey required by §11-1C-10 of this code that is not specifically authorized pursuant to this section shall be a violation of the tax information confidentiality provisions of §11-10-5d of this code.

(d) Nothing in this section may be construed to prohibit the publication, release, or other disclosure of the nonproprietary financial information and other data by the Joint Committee on Government and Finance.

(e) While the survey required under §11-1C-10 of this code shall be submitted to the Tax Commissioner every three years, the report to the Joint Committee on Government and Finance shall be filed annually to reflect the Tax Commissioner’s authority to annually amend the amount of average annual industry operating expenses for oil and natural gas wells.

ARTICLE 3. PROPERTY TAX ASSESSMENTS GENERALLY.

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

(a) The county commission shall annually, not later than February 1 of the tax year, 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, not including a Saturday, Sunday, or legal holiday in this state, until this work is completed. The board may adjourn *sine die* any time after February 15 of the tax year and shall adjourn *sine die* not later than the last day of February of the tax year.

(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 is 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 60 percent of its true and actual value as determined under this chapter, it shall fix it at 60 percent of its true and actual value: *Provided*, That 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 60 percent of the true and actual value of the property.

(e) Service of notice of the increase upon the taxpayer shall be sufficient, or upon his or her agent or attorney, if served 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 §59-3-1 *et seq*. 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 day the board acts on 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 §59-3-1 *et seq.* 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 acted on 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 §59-3-1 *et seq*. of this code and the publication area shall be the county. The expense of publication shall be paid out of the county treasury.

(f) Any person who receives notice as provided in subsection (e) of this section may appear before the board at the time and place specified in the notice to object to the proposed increase in the valuation of taxpayer’s property. After hearing the board’s reason or reasons for the proposed increase, the taxpayer may present his or her objection or objections to the increase and the reason or reasons for the objections and may either orally or in writing advise the board that the taxpayer elects for the matter to be heard in the fall of the tax year when the county commission meets as a board of assessment appeals as provided in §11-3-24b of this code: *Provided*, That if the property in question is natural resources property the taxpayer may, at its option, request a hearing before the West Virginia Office of Tax Appeals under the provisions of §11-10A-1 *et seq.* of this code: *Provided*, *however,* That the taxpayer’s election shall not stay a decision by the board to increase the assessed value of the property for the current tax year.

(g) The board may approve an agreement signed by the taxpayer or taxpayer’s representative and the assessor, and by a representative of the Tax Commissioner when the property is industrial property or natural resources property, that resolves a valuation matter while the land and personal property books are before the board for equalization and review.

(h) If any person fails to apply for relief at this meeting, he or she 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.

(i) 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 tax year. Then the property books shall be delivered to the assessor and the levies extended as provided by law.

(j) A taxpayer who elects to have a hearing before the board of equalization and review may appeal the board’s order as provided in §11-3-25 of this code. A taxpayer who elects to have a hearing before the board of assessment appeals may only appeal the assessed value as provided in §11-3-24b of this code.

§11-3-25. Relief in circuit court against erroneous assessment based upon alleged error in valuation.

(a) Any person 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 as provided in §11-3-24 or §11-3-24a of this code, 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 30 days after the adjournment of the board sitting as a board of equalization and review, or at any time up to 30 days after the order of the Board of Assessment Appeals is served on the parties, or at any time up to 30 days after the order of the West Virginia Office of Tax Appeals is served on the parties, 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 10 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 of Equalization and Review, or order of the Board of Assessment Appeals or the West Virginia Office of Tax Appeals 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 attorney, or in the case of the state, by its prosecuting attorney or other attorney representing the Tax Commissioner. The party desiring to take an appeal from the decision of either board or the West Virginia Office of Tax Appeals shall have the evidence taken at the hearing of the application before either board or the West Virginia Office of Tax Appeals, including a transcript of all testimony and all papers, motions, documents, evidence, and records as were before the board, certified by the county clerk or the executive director of the West Virginia Office of Tax Appeals and transmitted to the circuit court as provided in §58-3-4 of this code, except that, any other provision of this code notwithstanding, the evidence shall be certified by the county clerk or executive director within 30 days after the county clerk or executive director receives notice of such appeal together with a written request from the appealing party that the record be certified and transmitted within 30 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 either board orthe West Virginia Office of Tax Appeals, 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~~ Board of Equalization and Review or the Board of Assessment Appeals 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 and the reason or reasons for the changes 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 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 or a board of assessment appeals for the tax year in which the appeal arose, for the purpose of developing an adequate record upon which the appeal can be decided. The county commission shall schedule a hearing for the purpose of taking additional evidence at any time within 90 days of the remand order that is convenient for the county commission and for the parties to the appeal. If, however, there was no actual notice to the taxpayer, and no appearance by or on behalf of the taxpayer before the ~~board~~ Board of Equalization and Review, the Board of Assessment Appeals or the West Virginia Office of Tax Appeals, or if a question of classification or taxability is presented, 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 60 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 60 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 20 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 or credited to the taxpayer in accordance with the provisions of §11-3-25a of this code, and if not paid, he or she 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 60 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 20 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 20 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 90 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, and either party may appeal a question of classification or taxability.

(e) All persons applying for relief to the circuit court under this section shall be governed by the same presumptions, burdens, and standards of proof as established by law for taxpayers applying for such relief.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-8. Jurisdiction of office of tax appeals.

The Office of Tax Appeals has exclusive and original jurisdiction to hear and determine all:

(1)Appeals from tax assessments issued by the Tax Commissioner pursuant to §11-10-1 *et seq*. of this code;

(2)Appeals from decisions or orders of the Tax Commissioner denying refunds or credits for all taxes administered in accordance with the provisions of §11-10-1 *et seq*. of this code;

(3) Appeals from orders of the Tax Commissioner denying, suspending, revoking, refusing to renew any license, or imposing any civil money penalty for violating the provisions of any licensing law administered by the Tax Commissioner;

(4) Questions presented when a hearing is requested pursuant to the provisions of any article of this chapter which is administered by the provisions of §11-10-1 *et seq*. of this code;

(5) Matters which the Tax Division is required by statute or legislatively approved rules to hear, except employee grievances filed pursuant to §6C-2-1 *et seq*. of this code; ~~and~~

(6) Other matters which may be conferred on the office of tax appeals by statute or legislatively approved rules; and

(7) Appeals by a taxpayer from proposed assessment of natural resources property for *ad valorem* property tax purposes, as set forth in §11-3-24 of this code.

NOTE: The purpose of this bill is to clarify, for purposes of this article, the types of operating expenses that must be used for purposes of valuing producing oil and natural gas wells, the methodology that shall be used by the Tax Commissioner in calculating operating expenses, the confidentiality of information submitted by natural resource producers to the Tax Commissioner, reports that must be submitted by the Tax Commissioner to the Joint Committee on Government and Finance, and to provide for alternate appeal of proposed valuation of natural resources property for ad valorem property tax purposes.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.