



DECEMBER 9

TENTATIVE AGENDA
LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

Monday, December 9, 1991
1:00 p.m. - 3:00 p.m.

Senate Finance Committee Room 451

1. Approval of Minutes - Meeting November 5, 1991
2. Review of Legislative Rules:
 - a. Ethics Commission, WV, Dept. of Admr. - Private Gain, Series 6
 - b. Ethics Commission, WV, Dept. of Admr. - Voting, Series 9
 - c. Ethics Commission, WV, Dept. of Admr. - Employment, Series 11
 - d. Health Care Cost Review Authority - Financial Disclosure Rule
 - e. Barbers & Beauticians, WV Board of - Curriculum and Minimum Requirements, Subjects and Hour Schedule, Rules and Regulations for Schools of Beauty Culture Operating in WV, Joint Barber and Beauticians License
 - f. Barbers & Beauticians, WV Board of - Qualifications, Training, Examination and Licensing of Instructors in Barbering and Beauty Culture
 - g. Barbers & Beauticians, WV Board of - Operational Standards for Schools of Barbering and Beauty Culture
 - h. Barbers & Beauticians, WV Board of - Rules and Regulations for Licensing Schools of Barbering and Beauty Culture
 - i. Barbers & Beauticians, WV Board of - Operation of Barber, Beauty Shops, and Schools of Barbering and Beauty Culture

- j. Barbers & Beauticians, WV Board of - Fee Schedule
- k. Veterinary Medicine, WV Board of - Organization and Operation of the WV Board of Veterinarian Medicine
- l. Veterinary Medicine, WV Board of - Registration of Veterinarian Technicians
- m. Veterinary Medicine, WV Board of - Standards of Practice
- n. Veterinary Medicine, WV Board of - Limited Licensure
- o. Veterinary Medicine, WV Board of - Schedule of fees
- p. Health and Human Resources, Dept. of - Retail Food Store Sanitation

3. Other business:

Monday, December 9, 1991

1:30 - 3:00 p.m.

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Keith Burdette
ex officio nonvoting member

Robert "Chuck" Chambers,
ex officio nonvoting member

Senate

House

Wooton, Chairman
Chafin
Manchin, J.
Tomblin (absent)
Wiedebusch (absent)
Boley

Grubb, Chairman
Burk
Faircloth
Roop
Love (absent)
Gallagher

The meeting was called to order by Mr. Wooton, Co-Chairman.

The minutes of the November 5, 1991 meeting were approved.

Ms. Graham, Committee Counsel, explained that the rule proposed by the Ethics Commission, Private Gain, had been laid over at the Committee's October meeting. Richard Alker, Executive Director of the Ethics Commission, distributed and explained a proposed modification to Section 9 of the proposed rule. He stated that in accordance with the proposed modification to Section 9, the Commission intends to exclude all elected officials and part-time appointed officials from the requirements of Section 9. Mr. Alker answered questions from the Committee.

Mr. Wooton moved that the proposed rule be modified by deleting Section 10.2 of the proposed rule. The motion was adopted.

Mr. Wooton moved that Section 9 be modified in accordance with the proposed modification distributed by Mr. Alker. The motion was adopted.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained that the rule proposed by the Ethics Commission, Voting, had been laid over at the Committee's October meeting.

Mr. Wooton moved that the proposed rule be modified by adding a new section setting forth the provisions of House Rule 49 and Senate Rule 43 which set forth the circumstances under which a Legislator may abstain from voting. The motion was adopted.

Mr. Alker distributed and explained a proposed modification to Section 2.2 of the proposed rule.

Mr. Burk moved that Section 2.2 of the proposed rule be modified in accordance with Mr. Alker's proposed language. The motion was adopted.

Mr. Burk moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained that the rule proposed by the Ethics Commission, Employment, had been laid over at the Committee's October meeting. Mr. Alker and John Montgomery, an employee of the State Tax Department addressed the proposed rule and answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. Gallagher moved that the rule proposed by the Health Care Cost Review Authority, Financial Disclosure Rule, be laid over until the Committee's January meeting. The motion was adopted.

Michael McThomas, Associate Counsel, distributed a memorandum on an emergency rule promulgated by the Division of Public Safety, Modified Vehicle Inspections, and explained that compromise language on eligible inspection stations should be acceptable to the Division. Mr. McThomas answered questions from the Committee. Randall Rapp and Marvin Gray, representing the West Virginia Gasoline Dealers Association, addressed the proposed rule and answered questions from the Committee.

Mr. Roop moved that Counsel send a letter to the Division, on the Committee's behalf, requesting that the Division file an emergency amendment to the emergency rule to incorporate the compromise language.

Mr. Manchin moved to amend Mr. Roop's motion to also include an amendment to Sections 2.2.3.1 and 2.2.3.2 of the emergency rule to reduce the minimum years of experience and the number of years without a suspension from five to three years. The motion was adopted.

Mr. Faircloth moved to further amend Mr. Roop's motion to include an amendment to Section 2.2.3.5 of the emergency rule to reduce from five to three years the minimum number of years of experience for an inspector mechanic. The motion was adopted.

Mr. Roop's motion, as amended, was adopted.

Mr. Gallagher moved that the Committee stand in recess until 5:00 p.m.. The motion was adopted.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: December 9, 1991

TIME: 1:00³⁰ - 3:00 p.m.

| <u>NAME</u> | <u>Present</u> | <u>Absent</u> | <u>Yeas</u> | <u>Nays</u> |
|-----------------------------------|----------------|---------------|-------------|-------------|
| Chambers, Robert "Chuck", Speaker | | | | |
| Grubb, David, Co-Chair | ✓ | | | |
| Burk, Robert W., Jr. | ✓ | | | |
| Faircloth, Larry V. | ✓ | | | |
| Brian A. Gallagher | ✓ | | | |
| Love, Sam | | | | |
| Roop, Jack | ✓ | | | |
| Burdette, Keith, President | | | | |
| Wooton, William, Co-Chair | ✓ | | | |
| Chafin, Truman H. | ✓ | | | |
| Manchin, Joe, III | ✓ | | | |
| Tomblin, Earl Ray | | | | |
| Boley, Donna | ✓ | | | |
| Wiedebusch, Larry | | | | |
| TOTAL | | | | |

RE: _____

REGISTRATION OF PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Legislative Rule-Making Review

DATE: December 9, 1991 1:30-3:00 p.m.

| NAME | ADDRESS | REPRESENTING | PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT |
|--|--|---|--|
| Please print or write plainly JOHN MONTGOMERY | 214 BROOKHAVEN DR. NITRD, WV | --- | ETHICS COMMISSION RULE ON EMPLOYMENT |
| Dr Harry Newell | 712 N E Corkie Ave So. Charleston 25303 | Board of Veterinary Medicine | X Rules + Regulations |
| ROBERT LAMONT | 1207 QUARRIER ST CHARLESTON WV | Ethics Commission | |
| RICK ALKER | " | " | |
| David M. Mathis | 1033 Quailwood St. E Chas 25301 | W. Va. Log/Sawing Plan | |
| RICHARD M. FRANCIS | CHARLESTON, WV | MOUNTAIN STATE BLUE CROSS + BLUE SHIELD | X HCCRA FIN. DISCLOSURE |
| Frank Lamm | Chas WV | WV Auto Dealer | |
| Randall Rapp | 3701 Parkview Drive PARKERSBURG, WV | WV GASOLINE DEALERS ASSOC. | X MODIFIED VEHICLE INSUR. |
| MARVIN GRAY | 524 SIXTH AVE. HUNTINGTON WV | " " " " | X " |
| Hank Kasper | Char. WV. | Charles Ryan Assoc. | |
| Lanny Wilkins | Cross Lanes, WV | Board of Barber + Beauticians | |
| Ray Howard | Charleston | DHHR | if needed. |
| Ron Foreen | Charleston | DHHR | " " |
| Dery Carabian | Charleston | Steg, Joe + John | |
| Marianne K Stonestreet | Chas | HCCRA | if needed |
| Larry C. Fizer | | NCCRA | " |
| Brent Archer | Charleston | Columbia | |

Monday, December 9, 1991

5:00 - 7:00 p.m.

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Keith Burdette
ex officio nonvoting member

Robert "Chuck" Chambers,
ex officio nonvoting member

Senate

House

Wooton, Chairman
Chafin
Manchin, J.
Tomblin
Wiedebusch (absent)
Boley

Grubb, Chairman
Burk
Faircloth
Roop
Love
Gallagher (absent)

The meeting was reconvened by Mr. Grubb, Co-Chairman.

Ms. Graham reviewed the rule proposed by the West Virginia Board of Barbers & Beauticians, Curriculum and Minimum Requirements, Subjects and Hour Schedule, Rules and Regulations for Schools of Beauty Culture Operating in WV, Joint Barber and Beauticians License, and stated that the Board has agreed to technical modifications.

Mr. Burk moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the West Virginia Board of Barbers & Beauticians, Qualifications, Training, Examination and Licensing of Instructors in Barbering and Beauty Culture, and told the Committee that the Board had agreed to technical modifications. Larry Absten, Director of the Board, answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the West Virginia Board of Barbers & Beauticians, Operational Standards for Schools of Barbering and Beauty Culture. She stated that the Board had agreed to technical modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the rule proposed by the West Virginia Board of Barbers & Beauticians, Rules and Regulations for Licensing Schools of Barbering and Beauty Culture.

Mr. Roop moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the West Virginia Board of Barbers & Beauticians, Operation of Barber, Beauty Shops, and Schools of Barbering and Beauty Culture.

Mr. Roop moved that the proposed rule be approved. The motion was adopted.

Ms. Graham reviewed the rule proposed by the West Virginia Board of Barbers & Beauticians, Fee Schedule, and stated that the Board had agreed to technical modifications.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham explained the rule proposed by the West Virginia Board of Veterinary Medicine, Organization and Operation of the WV Board of Veterinarian Medicine, and stated that the Board had agreed to technical modifications. Dr. Harry Newell, Board Member, addressed the various rules proposed by the Board.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the rule proposed by the West Virginia Board of Veterinary Medicine, Registration of Veterinarian Technicians. She told the Committee that the Board had agreed to technical modifications.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the West Virginia Board of Veterinary Medicine, Standards of Practice, and stated that the Board had agreed to technical modifications.

Mr. Burk moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed the rule proposed by the West Virginia Board of Veterinary Medicine, Limited Licensure, and stated that in her opinion the proposed rule exceeds the Board's scope of authority and that the Board has agreed to withdraw the proposed rule.

No action was taken on the proposed rule.

Ms. Graham explained the rule proposed by the West Virginia Board of Veterinary Medicine, Schedule of fees, and stated that the Board had agreed to technical modifications. She stated that, in her opinion, Section 2.20 is unreasonable in that it allows the Board to double a fee if the fee is late.

Mr. Manchin moved that Section 2.20 of the proposed rule be modified to allow the Board to charge 25% of the fee as a late penalty. The motion was adopted.

Mr. Manchin moved that the proposed rule be approved as modified. The motion was adopted.

Ms. Graham reviewed her abstract on the rule proposed by the Department of Health and Human Resources, Retail Food Store Sanitation, and told the Committee that the Board had agreed to technical modifications. Ron Forren, Department of Health and Human Resources answered questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed his abstract on the rule proposed by the Division of Tax, Industrial Expansion and Revitalization Credit, Research and Development Credit, Qualified Housing Development Credit, Management Information Services Facilities Credit and Coal Based Liquids for Synthetic Fuels Credit, and stated that the Division had agreed to technical modifications. Mr. McThomas stated that there is a question regarding the intent of the Legislature as to whom the credit applies. Alan Mierke, Assistant State Tax Commissioner, Mark Morton and Mark Muchow of the State Tax Department, Philip Cox, a CPA and Richard Francis, representing the Home Builders Association, addressed the Committee regarding the proposed rule and answered questions from the Committee.

Mr. Roop moved that the proposed rule lie over until the Committee's January meeting. The motion was adopted.

Mr. Wooton moved that the Committee stand in recess until 10:00 a.m. on Tuesday, December 10, 1991, when the Committee will meet in the Senate Judiciary Room to continue consideration of the rules proposed by the Division of Tax. The motion was adopted.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: December 9, 1991

TIME: 4:00 - 7:00 p.m.

NAME

| Present | Absent | Yeas | Nays |
|---------|--------|------|------|
| | | | |
| ✓ | | | |
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| | | | |
| | | | |

Chambers, Robert "Chuck", Speaker

Grubb, David, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Brian A. Gallagher

Love, Sam

Roop, Jack

Burdette, Keith, President

Wooton, William, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Boley, Donna

Wiedebusch, Larry

TOTAL

RE: _____

REGISTRATION PUBLIC
AT
COMMITTEE MEETINGS
WEST VIRGINIA LEGISLATURE

COMMITTEE: Legislative Rule-Making Review

DATE: December 9, 1991

5 - 7
5:00-8:00 pm.

| NAME | ADDRESS | REPRESENTING | PLEASE CHECK (X) IF YOU DESIRE TO MAKE A STATEMENT |
|-------------------------------|--|-------------------------------------|--|
| Please print or write plainly | Box 256 | GFOA | |
| CHARLES R. WOODCOCK | BARBOURSVILLE, WV 25509 | CITY OF BARBOURSVILLE | <input checked="" type="checkbox"/> |
| ROBERT B. WILSON | | DEPT TAX + REV. | available to respond to questions on B.O |
| Paul Ryker | 845 4th Ave; H. Stn. WV | Padgett Business Services of WV | <input checked="" type="checkbox"/> |
| VERN SMITH, EA | 65 KEEPLAND DR. HING W | PAGGETT BUSINESS SVCS INC | <input checked="" type="checkbox"/> |
| PHILIP P. COX, CPA | 101 N. SPRING ST. MARTINSBURG, WV 25402 | COX AUDITORS NEWBOLD, CPAs | <input checked="" type="checkbox"/> |
| RICHARD M. FRANCIS | CHARLESTON | W. VA. HOME BUILDERS ASSOC. | <input checked="" type="checkbox"/> |
| G. Thomas Battie | PO Box 273 CHARLESTON, WV 25321 | Anker Energy, Inc. | <input checked="" type="checkbox"/> |
| Bob Hoffman | Charleston | TAX + REV | |
| Jerry A. Knight | " | " " | |
| Randy Lucas, EA | PO Box 536 Scott Depot WV 25560 | Padgett Bus. Services of the Valley | <input checked="" type="checkbox"/> |
| Lee Buckingham | 609 29th St. Vienna, WV | WV GFOA & City of Vienna | |
| Randall H. Craig | P.O. Box 1607 Parkersburg, WV 26102 | WV GFOA & City of Parkersburg | |
| JACK THORNBURGH | 3721 4TH AVE. HUNTINGTON, WV 25702 | CITY OF HUNTON | |
| Nancy Peck | PO Box 311 FAX 25904 | City of Beckley | |
| STEVE HANNAN | BUCKHANNON | W.V FARM BUREAU | |
| Brent Archer | Charleston | Columbia | |



Dist'd
12/9/91

**State of West Virginia
Department of Tax and Revenue**

GASTON CAPERTON
GOVERNOR

Charleston 25305

L. FREDERICK WILLIAMS, JR.
SECRETARY

**NONAPPLICATION OF THE QUALIFIED HOUSING DEVELOPMENT
TAX CREDIT TO CONSUMERS SALES AND SERVICE TAX
AND USE TAX PAID ON BUILDING MATERIALS USED IN THE
CONSTRUCTION OF A QUALIFIED HOUSING DEVELOPMENT OR
CONSUMERS SALES AND SERVICE TAX AND USE TAX
OTHERWISE PAID ON CONSTRUCTION COSTS**

The credit for residential housing projects is available in the amount of 10% of the applicable percentage of the cost of land and depreciable property purchased for the construction of a qualified housing development project placed in service or use in West Virginia during the taxable year. The qualified housing development project is a residential housing development located in West Virginia which contained five or more single family contiguous residential housing units, or multifamily residential buildings containing five or more residential housing units which are contiguously located. The amount of the credit is applied over a 10 year period at the rate of 1/10th per year. The credit may be used to offset up to 50% of annual tax liability for business franchise tax, business and occupation tax, severance tax and consumers sales and service tax and use tax liability on purchases directly used or consumed in the taxpayer's qualified investment activities.

Consumers sales and service tax and use tax paid on building materials under the qualified housing development credit become part of the investment upon which the credit is based. The regulations exclude all West Virginia sales and use tax paid on purchases of building materials or paid on other construction costs from those taxes against which the qualified housing development credit can apply. A suggestion has been made that such taxable purchases are directly related to use or consumption in the qualified housing development activity, and that such taxes should be subject to offset by the credit.

Timing

The tax credit becomes available to the taxpayer in the year when qualified investment is placed in service or use. Section 11-13D-3(g)(1) of the West Virginia Code reads as follows:

(g) *Eligible investment for qualified housing development project after June 30, 1986.* - For property and services purchased for a qualified housing development

project on or after the first day of July, one thousand nine hundred eighty-six, the amount of allowable credit shall be equal to ten percent of the eligible investment (as determined in section five-a made for a qualified housing development project, and shall reduce the business and occupation taxes under sections two-c and two-e, article thirteen of this chapter, subject to the following conditions and limitations:

(1) The allowable credit shall be applied over a ten-year period at the rate of one tenth of the amount thereof per taxable year, beginning with the taxable year in which any combination of residential housing units (as defined in section five-a of this article) available for occupancy or occupied in the qualified housing development project is five or more residential housing units.

The contention that credit should apply against the consumers sales and service tax or use tax on building materials runs contrary to the requirements of this statutory provision. By statute, the credit applies against taxes beginning at the point in time when investment is placed in service or use. The consumers sales and service tax and use tax on building materials would have been paid long prior to the placement of investment into service or use as defined by the statute. Therefore, the credit cannot apply against those taxes paid.

Double Benefit

To permit the taxpayer to obtain credit for having paid the sales tax, and to then again permit the taxpayer to apply that credit against his taxes so that he could obtain a refund of that same amount of sales tax would essentially create a "double dip" for the taxpayer, and increase the amount of credit which would be available to him.

A commentator proposes to eliminate this problem by amending Section 3a.7 of the regulations so as to keep the credit base from including sales tax when initial purchases are made. This change is contrary to statute. The statute permits the credit base to include capitalized investment in property purchased for a qualified housing development project. The statute defines this credit base as the cost of such property purchased, including sales and use tax legitimately paid as a part of that cost. The commentator's proposal to exclude such costs under Section 3a.7 is utterly without statutory authority.

The argument has been made by a commentator made that at the time the credit was enacted, residential housing developers paid a substantial business and occupation tax on home sales, and they paid no sales tax on building materials. The sales tax in fact was applied to purchases of building materials by speculative builders, but not to such

purchases by contractors. Housing developers who structured their transactions so as to qualify as contractors had the exemption available. The commentator states that the Legislature amended the statute on June 30, 1987, to allow the credit to be applied against consumers sales and service tax and use tax at precisely the same point in time that the business and occupation tax was substantially repealed. However, at the time this statutory change was made, the consumers sales and service tax and use tax were not applied against purchases of building materials by construction contractors. Thus, at the time the Legislature made the change whereby the credit could be applied against consumers sales and service tax and use tax arising from the qualified activity, consumers sales and service tax and use tax were not typically imposed on purchases of building materials by contractors. The Legislature subsequently enacted an amendment whereby the consumers sales and service tax and the use tax would apply against building materials purchased by contractors as of March 1, 1989. West Virginia Code § 11-15-8a. Significantly, the West Virginia Legislature did not at that time see fit to amend the West Virginia housing development credit statute either by changing the credit base to exclude sales or use taxes paid on materials purchased, or by changing the list of taxes subject to the credit so as to expressly include consumers sales and service taxes and use tax paid on building materials. Certainly, the Legislature did not intend to create a "double dip" whereby the taxpayer could potentially spend \$1.00 in investment and obtain a tax credit calculated and applied as if \$2.00 were spent.

The commentator's suggested regulation changes relating to the application of credit against consumers sales and service tax or use tax on construction materials must be rejected as inconsistent with the statute. Under Section 11-13D-3a of the West Virginia Code, the credit applies against the consumers sales and service tax and use tax "on purchases directly used or consumed in taxpayer's qualified investment activity." The qualified investment activity is the ownership and operation of a housing development by the taxpayer. The commentator's suggestion that the credit should apply against sales tax paid on purchases of building materials must be rejected.

DISPOSITION OF QUALIFIED HOUSING DEVELOPMENT INVESTMENT BY SALE OF THE HOUSING UNIT

A proposal has been made to the effect that the sale of a housing unit by a developer of a qualified housing development should not be treated as a "disposition" of the property which would trigger recapture of credit otherwise available for such property. A commentator argues that it is the selling of the housing unit to a permanent resident which places the property into service or use and ultimately satisfies the purpose underlying the credit.

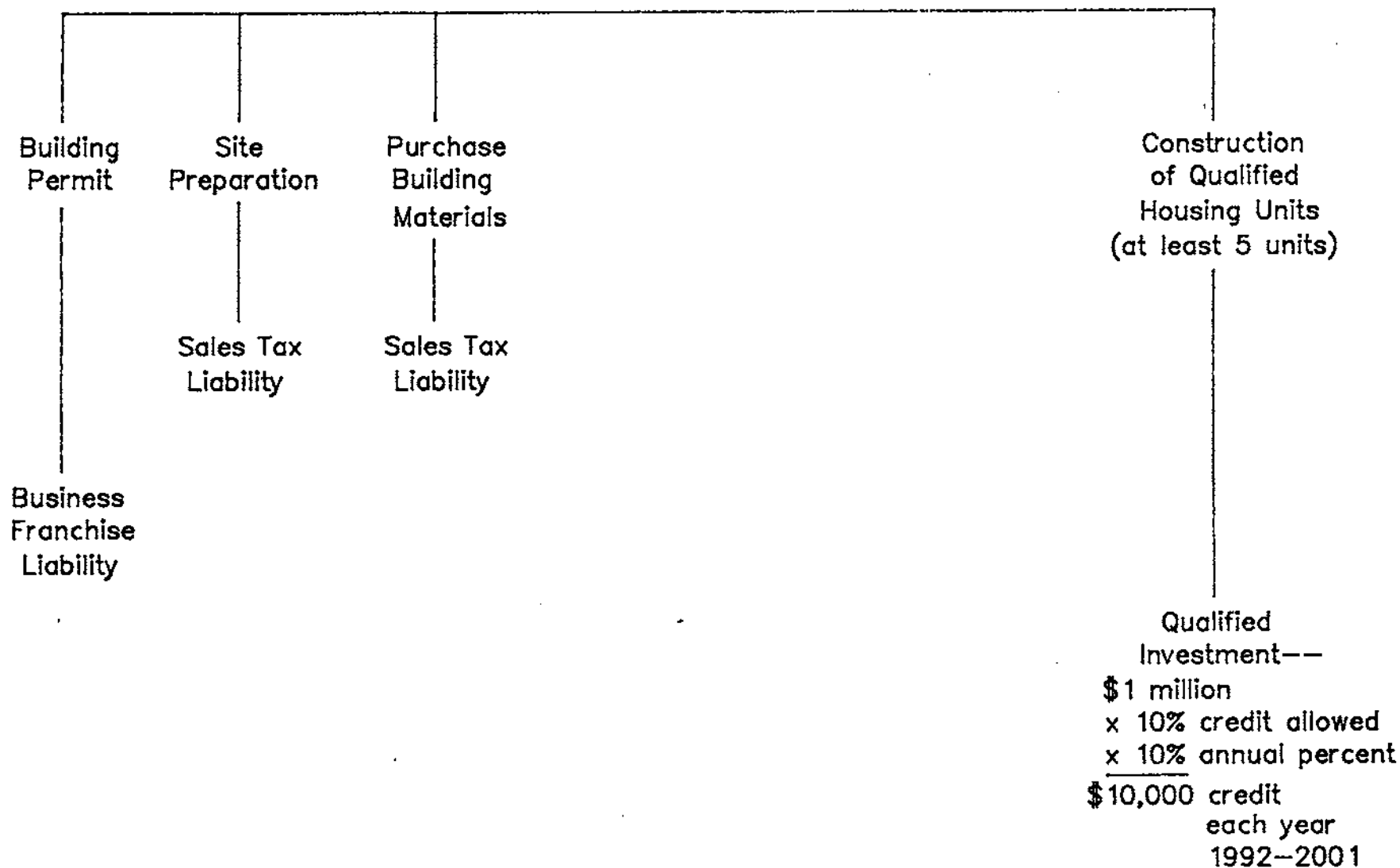
The qualified housing development credit is only available to persons who make qualified investment in a qualified housing development and who continue to retain an

interest in the qualified housing development during the years over which the qualified housing development credit is available. Thus, if the developer leases housing of a qualified housing development to nontransients as residential property, then the developer and operator of that qualified housing development should have the credit available for having invested in those housing units and other qualified investment in the development. If the developer sells qualified housing development units, then no credit based upon investment in the building materials and construction for those units is available. The taxpayer would no longer continue to operate those units. However, the taxpayer might continue to operate the development as a manager or housing development operator when some units have been sold, whereas others have been leased to residents; in which case the developer would have credit available for his qualified investment in streets, storm drains, sewage disposal apparatus, and any rental housing units in the development.

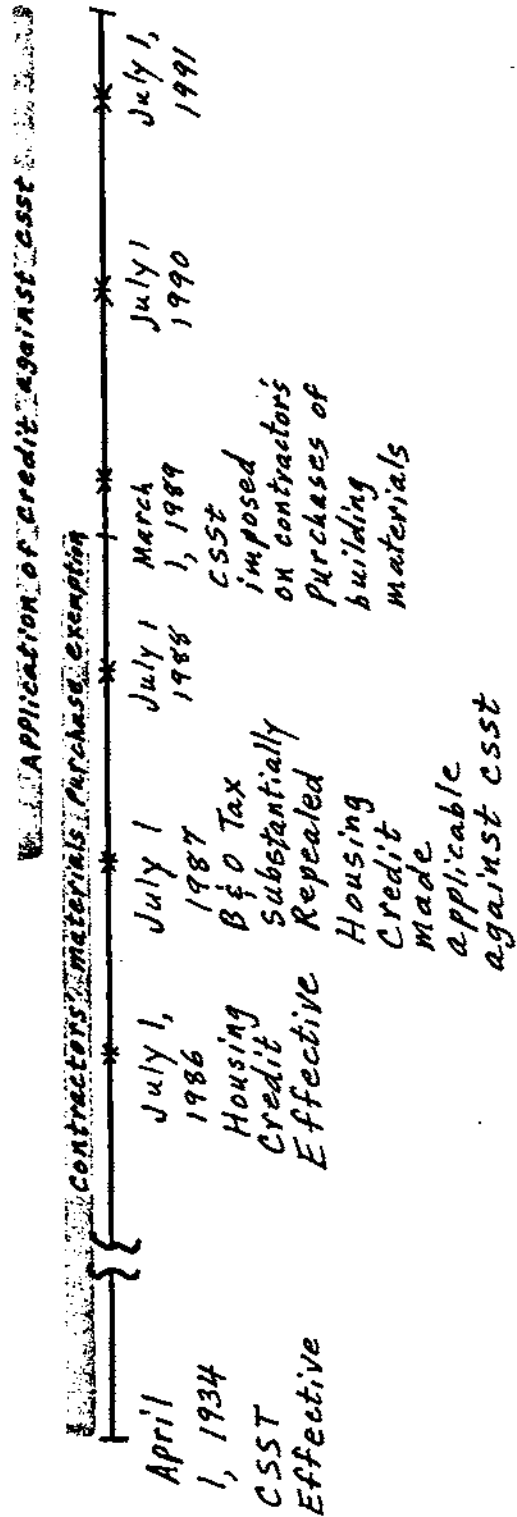
Section 11-13D-6 of the West Virginia Code clearly states that disposition of property or cessation of use during any taxable year with respect to which a tax credit has been allowed will result in forfeiture of all remaining credit available on such property, and recapture of credit in circumstances where the disposition of property or cessation of use of property in a qualified investment has occurred, except in the case of fire, flood, storm or other casualty. The statute is clear and unambiguous on this point, and the commentator's suggestion that the sale of qualified housing units by the developer should not be treated as a disposition of such property must be rejected.

Housing Construction Time Lines

June 1991 July 1991 August 1991 September through December 1991 January 1992



Legislation Time Line



EXAMPLE OF A "DOUBLE DIP"

| <u>Investment Property</u> | <u>Tax Cost</u> | <u>Tax 6%</u> | <u>Total Cost</u> |
|----------------------------|------------------|----------------|-------------------|
| Land | 300,000 | 0 | 300,000 |
| Site Preparation | 10,000 | 0 | 10,000 |
| Building Materials | 40,000 | 2,400 | 42,400 |
| Other Construction Costs | 20,000 | 0 | 20,000 |
| Furniture | 5,000 | 300 | 5,300 |
| Fixtures | 2,000 | 120 | 2,120 |
| | | | |
| Total | <u>\$377,000</u> | <u>\$2,820</u> | |
| Total Qualified Investment | | | <u>\$379,820</u> |

Credit Computation

| Qualified Investment | | Statutory Credit | | Total Credit |
|----------------------|---|------------------|---|-----------------|
| \$379,820 | X | 10% | = | <u>\$37,982</u> |

| Total Credit | | 10 Year Credit Application Period | | Annual Credit |
|--------------|---|-----------------------------------|---|----------------------------|
| \$ 37,982 | ÷ | 10 | = | <u>\$3,798.20 Per Year</u> |

Credit Arising From Payment Of Sales Tax

| Sales Tax Portion Of Qualified Investment | | Statutory Percentage | Credit Period | Annual Credit |
|---|---|----------------------|------------------|---------------------------|
| \$2,820 | X | 10% | = 282 ÷ 10 years | = <u>\$28.20 Per Year</u> |

Application Of Credit

| <u>Tax</u> | <u>Amount</u> | <u>Statutory 50% Limit</u> | <u>Credit Applied</u> | <u>Annual Credit Balance Beginning At \$3,798.20</u> |
|---|---------------|--------------------------------|---------------------------|--|
| Business Franchise Tax | 1,000 | 500 | 500 | 3,298.20 |
| Sales Tax From Operations | 800 | 400 | 400 | 2,898.20 |
| Sales Tax *Paid* On Qualified Investment | 2,820 | 1,410 | <u>1,410</u> | <u>1,488.20</u> |
| Total Annual Credit Applied | | | <u>\$2,310</u> | |

The sales tax purportedly paid on qualified investment created \$282.00 of total credit (\$28.20 annually), and that same sales tax was offset by the credit in the amount of \$1,410.00. Thus, the State of West Virginia paid for the taxpayer's sales tax liability twice:

First, by giving the taxpayer a \$282.00 credit applicable against all of the above listed taxes over a 10 year period;

Second, by allowing the taxpayer to apply the credit against the tax liability which should have been paid to create that \$282.00 credit. Thus the "double dip."

Dist'd 12/9/93
Robert Francis

An Explanation Of
THE WEST VIRGINIA QUALIFIED HOUSING DEVELOPMENT CREDIT
Presented By
The West Virginia Home Builders Association

"THE LEGISLATURE FINDS THAT THE . . . CONSTRUCTION OF RESIDENTIAL HOUSING . . . [IS] IN THE PUBLIC INTEREST AND PROMOTE[S] THE GENERAL WELFARE OF THE PEOPLE OF THIS STATE. IN ORDER TO ENCOURAGE CAPITAL INVESTMENT IN THIS STATE AND THEREBY INCREASE EMPLOYMENT AND ECONOMIC DEVELOPMENT, THERE IS HEREBY PROVIDED A TAX CREDIT FOR . . . CERTAIN HOUSING AND DEVELOPMENT RELATED EXPENDITURES . . ." Excerpt from W.Va. Code §11-13D-1, as amended by 1986 Acts Of The Legislature, Chapter 159.

I. How the Credit Works:

- Requires at least five contiguous housing units to be constructed for SALE OR RENT as permanent, primary residences.
- The MAXIMUM CREDIT which can be taken in each of ten years is ONE PERCENT of the investment made to purchase land and construct the residences.
- In all events, the credit may ONLY reduce no more than 50% of the franchise tax and the sales or use taxes otherwise paid by the developer.
- SEE ATTACHED EXAMPLES OF HOW THE CREDIT WORKS BASED ON ACTUAL PROJECTS.

II. What the CREDIT DOES for West Virginia:

Because it lowers the cost of providing housing, the credit:

- Creates and sustains JOBS in the building trades and the building supply business.
- Generates ADDITIONAL TAX REVENUES in several ways:

- More personal income tax revenues on laborers constructing the residences.
 - More corporation net income tax revenues on any developers' profits.
 - More local property tax revenues on constructed residences.
 - More tax revenues of all kinds as a result of the multiplier effect from increased economic activity.
- Stimulates AVAILABILITY OF AFFORDABLE HOUSING

III. The Tax Departments PROPOSED RULES Would SEVERELY UNDERMINE the Credit's BENEFITS.

A. The ALLEGED "Double Dip" Issue:

- Only occurs in limited circumstances (self-constructed RENTAL housing units).
- NEVER OCCURS when CONTRACTORS build the residences for sale or rental (Thus, the 1989 imposition of sales tax on building materials purchased by contractors is IRRELEVANT.)
- The TAX DEPARTMENT'S SOLUTION to a limited problem is to VIRTUALLY ELIMINATE THE CREDIT against 50% of sales or use tax FOR ALL HOME BUILDERS, regardless of whether they are building homes for sale or rental.
- THE SOLUTION to any "double dipping" which may occur and WHICH DOES NOT SO SEVERELY UNDERMINE THE CREDIT'S BENEFITS, is to adopt a reasonable interpretation of legislative intent by simply precluding the addition of sales or use tax in the investment eligible for the credit.

B. The ALLEGED Early Disposition Issue:

- The TAX DEPARTMENT SAYS: One of the VERY ACTS which GIVES RISE to the CREDIT, is the SAME ACT which, DENIES THE CREDIT.
- The general statutory section providing for denial and recapture of various credits earned, when there is an "early disposition", is AMBIGUOUS

as to HOUSING DEVELOPMENT CREDITS taken against SALES OR USE TAXES .

- That AMBIGUITY should be resolved IN FAVOR of the clear, and express requirement of THE LAW that construction of housing FOR SALE as well as for rental, entitles the builder to the credit against sales and use taxes.

C. The Timing Issue:

- The Tax Department's proposed rule DENYING CREDIT against sales or use taxes incurred in CREATING a qualified housing development project CONTRADICTS ITS OWN RULES AND PRACTICES.
- Qualified expenditures are those "directly used or consumed" in the qualified housing development project.
- "Directly used or consumed" includes expenditures "fairly related" to the qualified housing development project.
- "Directly used or consumed" expenditures to CONSTRUCT a NEW industrial facility have always been exempt for sales or use tax purposes.
- FOR PURPOSES OF THE CREDIT, sales and use taxes are deemed paid at the END of the year - AFTER building materials are purchased.

IV. The Solutions to the PROBLEMS CREATED by the TAX DEPARTMENT'S Proposed Rules are to:

- Directly eliminate the purported "double dipping" (in the limited circumstances where it may occur) by precluding the addition of sales or use taxes in the credit BASE, NOT by ENTIRELY ELIMINATING the CREDIT against those taxes.
- Adopt a REASONABLE interpretation of the AMBIGUOUS early disposition rule by NOT TREATING the VERY ACT QUALIFYING FOR THE CREDIT as an ACT DENYING THE CREDIT.
- Recognize and apply the GENERAL RULE that sales or use taxes incurred in CREATION of QUALIFIED HOUSING are ELIGIBLE to be reduced by the CREDIT.

- SEE ATTACHED SUGGESTED CHANGES IN LANGUAGE OF PROPOSED RULES TO PROVIDE THESE SOLUTIONS.

V. PRESERVATION of the Credit's BENEFITS and FAIRNESS TO THOSE Who Have EARNED Them.

- Credit enacted in 1986 and extended to sales and use tax in 1987.
- Since, 1986, developers invested in qualified housing development projects, thus earning the credits.
- Since 1986, until 1991, the Tax Department processed and approved developer's tax returns claiming those earned credits.
- Rules first proposed in 1991.
- The Tax Department's Proposed Rules represent a TRANSPARENT AND SELFSERVING ATTEMPT TO EFFECTIVELY REPEAL and NULLIFY the LEGISLATURE'S CLEAR PURPOSE - stated on the first page of this report.
- The CREDIT PROVIDES for:

WEST VIRGINIA CONSTRUCTION JOBS
WEST VIRGINIA TAX REVENUES
WEST VIRGINIA HOUSING NEEDS

2370740DOC.91

QUALIFIED SINGLE FAMILY HOUSING PROJECT - UNITS FOR SALE
 (ALL \$ AMOUNTS SHOWN IN THOUSANDS)

| | 1988 | 1989 | 1990 | 1991 (EST) | COMMENTS |
|---|--------|--------|----------|------------|---|
| Housing credit data: | | | | | |
| Number of units | 7 | 8 | 13 | 7 | |
| Eligible investment | \$ 500 | \$ 800 | \$ 1 040 | \$ 630 | |
| Annual credit available | 5 | 8 | 10 | 6 | 10% of eligible investment |
| Cumulative credit available | 5 | 13 | 23 | 29 | divided by 10 years. |
| State taxes paid by this activity that are eligible to be credited: | | | | | |
| BFT | 5 | 7 | 12 | 6 | |
| CST/use tax | 12 | 30 | 51 | 27 | 6% of certain materials costs. |
| Total | 17 | 37 | 63 | 33 | |
| Usable credits | (5) | (13) | (23) | (16) | Usable credit is limited to lesser of 50% BFT and 50% CST/use tax applicable to the activity, or the annual credit available. |
| Net taxes paid* | \$ 12 | \$ 24 | \$ 40 | \$ 17 | |

*Does not include substantial annual WV personal/corporate net income tax or county real estate taxes attributable to construction/sale of these housing units.

QUALIFIED APARTMENT PROJECT FOR RENT
(ALL \$ AMOUNTS SHOWN IN THOUSANDS)

| | 1988 | 1989 | 1990 | 1991 (EST) | COMMENTS |
|---|------|--------|--------|------------|---|
| Housing credit data: | | | | | |
| Number of units | - | 16 | 16 | 16 | |
| Eligible investment | \$ - | \$ 600 | \$ 600 | \$ 600 | |
| Annual credit available | - | 8 | 6 | 6 | 10% of eligible investment |
| Cumulative credit available | - | 6 | 12 | 18 | divided by 10 years. |
| State taxes paid by this activity that are eligible to be credited: | | | | | |
| BFT | - | N/A | N/A | N/A | |
| CST/use tax | - | 15 | 16 | 16 | 6% of certain materials costs. |
| Total | - | 15 | 16 | 16 | |
| Usable credits | - | (6) | (8) | (8) | Usable credit is limited to lesser of 50% BFT and 50% CST/use tax applicable to the activity, or the annual credit available. |
| Net taxes paid* | \$ - | \$ 9 | \$ 8 | \$ 8 | |

*Does not include substantial annual WV personal/corporate net income tax or county real estate taxes attributable to construction/operation of this project.

AMENDMENT TO WEST VIRGINIA DEPARTMENT OF
TAX AND REVENUE'S PROPOSED LEGISLATIVE
RULES TITLE 110, SERIES 13D, SECTION 3a

3a.5 ~~In no case shall~~ For the purposes of the credits arising under W. Va. Code article 13D, chapter 11 ~~offset any no~~ amount of consumers sales and service tax or use tax ~~which was~~ shall be included in the measure of investment in property purchased or leased and upon which qualified investment was based.

3a.6 The credit may offset only the consumers sales and service tax and use tax liabilities of the taxpayer claiming the credit. The credit shall never offset any portion of the consumers sales and service tax or use tax collected from customers of a taxpayer entitled to credit and held in trust by such taxpayer for remittance to the state.

3a.7 Application of the Qualified Housing Development Credit Against Consumers Sales and Service Tax and Use Tax. - The qualified housing development credit allowed under W. Va. Code § 11-13D-3(g) shall be allowed against the consumers sales and service tax and use tax liabilities of a taxpayer entitled to such credit (up to the 50% limitation) only against those consumers sales and service taxes and use taxes arising ~~out of~~ from purchases fairly related to the operation of a qualified housing development project. ~~No~~ Such credit shall be allowed against the consumers sales and service tax or use tax arising from purchases of building materials or arising from other construction costs initially incurred in the creation of the qualified housing development project. ~~In no case shall credit be allowed to offset any amount of sales or use tax which was included in the measure of investment in a qualified housing development project upon which credit is based.~~

3a.8 The qualified housing development credit shall become available in the first year when five or more qualified housing units are placed in service or use.

3a.9 Qualified housing development credit is only available to persons who make qualified investment in a qualified housing development and who continue to retain an interest in such qualified housing development during the ten years over which the qualified housing development credit is available. For example: If the builder of a qualified housing development sells or leases housing development units to nontransients as residential property, then the builder and operator of that qualified housing development shall have credit available for those materials used in building those units and for other qualified investment in the housing development. ~~If the builder of the qualified housing development sells qualified housing development units, then no credit based upon investment in the building materials for these units sold shall be allowable.~~ However, If the builder continues to operate the development as a manager or housing development operator, then the qualified housing development credit ~~may~~ shall also be available for the operator's qualified investment in streets, storm drains and sewage disposal apparatus even though the operator may have sold the housing units to residents.

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MODIFIED INSPECTION STATIONS ALLOTMENT BY COUNTY

| <u>COUNTIES</u> | <u>STATIONS ALLOTTED</u> | <u>COUNTIES</u> | <u>STATIONS ALLOTTED</u> |
|-----------------|------------------------------|-----------------|------------------------------|
| BARBOUR | 3 | MINGO | 6 |
| BERKELEY | 13 | MONONGALIA | 12 |
| BOONE | 5 | MONROE | 2 |
| DRAXTON | 2 | MORGAN | 3 |
| BROOKE | 4 | MCDOWELL | 6 |
| CABELL | 19 | NICHOLAS | 5 |
| CALHOUN | 2 | OHIO | 10 |
| CLAY | 2 | PENDLETON | 2 |
| DODDRIDGE | 2 | PLEASANTS | 2 |
| FAYETTE | 9 | POCAHONTAS | 2 |
| GILMER | 2 | PRESTON | 6 |
| GRANT | 2 | PUTNAM | 8 |
| GREENBRIER | 8 | RALBIGH | 14 |
| HAMPSHIRE | 3 | RANDOLPH | 5 |
| HANCOCK | 7 | RITCHIE | 2 |
| HARDY | 2 | ROANE | 2 |
| HARRISON | 14 | SUMMERS | 2 |
| JACKSON | 5 | TAYLOR | 2 |
| JEFFERSON | 8 | TUCKER | 2 |
| KANAWHA | 43 | TYLER | 2 |
| LEWIS | 3 | UPSHUR | 4 |
| LINCOLN | 3 | WAYNE | 6 |
| LOGAN | 7 | WEBSTER | 2 |
| MARION | 12 | WETZEL | 4 |
| MARSHALL | 6 | WIRT | 2 |
| MASON | 4 | WOOD | 18 |
| MERCER | 13 | WYOMING | 5 |
| MINERAL | 6 | | |
| | | TOTAL | 345 |

Allotment per county is based on number of registered vehicles within that particular county, and no county will have less than two (2) stations.

Dist'd 12/9/91

M E M O R A N D U M

TO: Legislative Rule-Making Review Committee

FROM: Michael P. McThomas, Counsel

SUBJECT: Draft Language for Modified Vehicle Inspection
Emergency Rule

DATE: December 6, 1991

For your review, I have attempted to draft some language upon consulting with Dan Huck, the Governor's counsel, which may be acceptable to the Division of Public Safety and the members of the Legislative Rule-Making Review Committee. The intent is to remove the mandatory burden upon new dealers from performing inspections, allow other certified inspection stations to perform inspections, provide accessibility to modified vehicle owners to obtain inspection stickers and facilitate an administratively expedient procedure for the Division of Public Safety. This proposed methodology will be based upon the number of vehicles registered in a county and provide for a minimum number of two stations per a county. The resultant number of modified vehicle inspection stations is estimated at 345 statewide. Attached is a chart showing the number of stations by county.

In lieu of the emergency rule sections 2.2, 2.2.1, 2.2.2 and 2.2.3, counsel recommends that certified inspection stations meeting the following minimum standards be permitted to perform modified vehicle inspections in accordance with the following:

2.2 Upon the submission of a completed application, the Superintendent of Public Safety may grant certified inspection stations the authority to perform modified vehicle inspections in accordance with this section 2.2.

2.2.1 To the extent that at least two qualified applicants are available, each county shall have a minimum of two modified vehicle inspection stations.

2.2.2 To the extent that at least a minimum number of qualified applicants are available, each county shall have one modified vehicle inspection station for every four thousand registered vehicles within that county.

2.2.2.1 The Superintendent first shall allocate the number of modified vehicle inspection stations based upon the geographic location of the certified inspection stations submitting applications to ensure accessibility of modified vehicle inspection stations throughout a county.

2.2.2.2 If the number of qualified applicants exceeds the number of modified vehicle stations allotted to a particular county, the Superintendent shall grant authority to

perform modified vehicle inspections first based upon geographic location to ensure accessibility of modified vehicle inspection stations throughout the county. The remainder of qualified applicants will be randomly selected by the Division of Public Safety.

2.2.3 In order to be qualified to be a modified vehicle inspection station, a certified inspection station must continue to meet the following minimum standards:

2.2.3.1 The certified inspection station must have been a certified inspection station for the five consecutive years immediately preceding the submission of the application;

2.2.3.2 The certified inspection station must not have been suspended by the Division of Public Safety from performing inspections for the five consecutive years immediately preceding the submission of the application;

2.2.3.3 The certified inspection station must have two licensed inspector mechanics other than the owner of the station.

2.2.3.4 The certified inspection station must be at least a certified two-car inspection station.

2.2.3.5 Each licensed inspector mechanic who will be performing modified vehicle inspections must have a minimum of five years experience as an inspector mechanic and may not have been suspended by the Division of Public Safety.

2.2.4 The Superintendent of the Division of Public Safety may certify additional modified vehicle inspection stations to operate in any particular county if the Superintendent determines that the number of modified vehicle inspection stations in a particular county is insufficient to meet the demand for modified vehicle inspections.

2.2.5 For purposes of this section 2.2, a completed application shall consist of a signed application form demonstrating the criteria contained in section 2.2.3 of this section. Application forms will be prescribed by the Division of Public Safety.

Dist'd 12/9/91
Richard Alke

As modified, 158-9-2.2 would read:

"For the purpose of this section a matter will be considered 'personal' to a public official or public employee when he or she has any pecuniary interest either directly or indirectly in the matter or is affected in a manner which may influence his or her vote or would clearly give the appearance of impropriety. An interest is not 'personal' if the interest of the public official or public employee in the matter is affected as a member of, and to no greater extent than any other member of, a profession, occupation or ~~group~~ ^{class}."

adopted As modified, 158-6-9 will read:

"Full-time appointed public officials and part-time and full-time public employees may not receive private compensation for performing private work during time they are compensated by the governmental agency."

Distributed
12/9/91

WV LEGISLATIVE RULE-MAKING REVIEW COMMITTEE
PROPOSED LEGISLATIVE RULES RELATED TO THE
WV QUALIFIED HOUSING DEVELOPMENT CREDIT
REMARKS BY PHILIP P. COX, CPA

November 5, 1991

I. INTRODUCTION.

Purpose of my appearance -- To urge you to correct proposed regulations which would remove the limited tax incentives now available for qualified residential housing projects for West Virginians.

II. OVERVIEW OF THE "QUALIFIED RESIDENTIAL HOUSING CREDIT" NOW IN THE LAW.

- A. Applies only to owners who construct primary residential housing projects of 5 or more units for either rent or sale in WV.
- B. It applies only to WV BFT/Sales/Use taxes paid by the eligible taxpayer -- no income tax credit is available, nor is there any credit against local property taxes, an increasingly important revenue source.

- C. Although the potential annual credit is 1% of the cost of such a project for 10 years, it can never exceed 1/2 of the owner's BFT/Sales/Use tax attributable to the project in any year.

III. THE PROPOSED REGULATIONS.

The proposed regulations before you should be modified. If not, there would be no meaningful incentive left in the tax law for the housing business. This is because the proposed regulations are specifically drafted to prevent taxpayers from using the credit against the only substantial amounts of taxes eligible for the credit, that is, the CST/Use Tax on materials incorporated in the building of these projects. (There are very limited amounts of BFT attributable to the housing business, because it is highly leveraged.)

- A. For rental units only, the Tax Department has identified that a "double dip" in the state's tax revenues can occur, unless these regulations are enacted, they say. In the example they furnished us, the purported "double-dipping" amounted to a whopping \$14.10/yr., out of a potential credit of about \$3,800 -- hardly a raid on the treasury! (The so-called "double dip" can easily be eliminated in language the WV Homebuilders have submitted

without denuding the legitimate credit.)

B. For housing developers selling units to homeowners, the Tax Department proposes that the very act of qualifying for the credit, that is, selling the building to be used as a primary residence, is a disposition of the investment, thus causing recapture or forfeiture of the credit for that unit!

C. As if this weren't enough, for rental projects, the Tax Department proposes to say that sales taxes paid on the cost of the units occurs before the activity starts, and thus they propose that these Sales/Use Taxes can't be partially reduced, because they aren't attributable to the housing "activity"!

IV. REAL-LIFE EXAMPLES

Real-life examples of how these credits have been earned in reliance on the law as presently enacted by you are contained in a handout package prepared by the WV Homebuilders Association with our assistance. Two key points they illustrate:

A. That the housing credit is a meaningful tax incentive for a vital WV business sector (that presently has enough

other troubles of its own).

B. That there are built-in limits against abuse. The credits, however large they may appear on paper, can never exceed 50% of the eligible taxes in any year, and the eligible taxes are only a small part of the total tax revenues generated for the state and its local subdivisions.

V. CONCLUSION.

The legislative finding and purpose of this credit contained in the WV Code is that "construction of residential housing is in the public interest" and this credit is a means "to encourage capital investments in this state and thereby increase employment and economic development". We all know how important affordable housing is.

I urge you to exercise your legislative oversight and correct the over-zealous, deliberate attempt by the executive branch to circumvent your intent to provide a limited, but meaningful, tax incentive to the WV housing industry. The Tax Department should not be allowed in late 1991 to identify and minor perported "loopholes" in the code's language as a pretext to repeal, through attempted regulatory fiat, the clear express intent of the laws you enacted almost five years ago.

DECEMBER 10

AGENDA

LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

**Tuesday, December 10, 1991
10:00 a.m.**

Senate Judiciary Committee Room

1. Review of Legislative Rules:
 - a. Tax, Division of - Industrial Expansion and Revitalization Credit, Research and Development Credit, Qualified Housing Development Credit, Management Information Services Facilities Credit and Coal Based Liquids for Synthetic Fuels Credit
 - b. Tax, Division of - Consumers Sales and Service Tax and Use Tax
 - c. Tax, Division of - Appraisal of Producing and Reserve Oil and Natural Gas Property for Periodic Statewide Reappraisals for Ad Valorem Property Tax Purposes
 - d. Tax, Division of - Soft Drinks Tax
 - e. Tax, Division of - Severance Tax
 - f. Tax, Division of - Corporation Net Income Tax
 - g. Tax, Division of - Business Franchise Tax
2. Other business:

Tuesday, December 10, 1991

10:00 a.m. - Noon

Legislative Rule-Making Review Committee
(Code §29A-3-10)

Keith Burdette
ex officio nonvoting member

Robert "Chuck" Chambers,
ex officio nonvoting member

Senate

House

Wooton, Chairman
Chafin (absent)
Manchin, J.
Tomblin (absent)
Wiedebusch (absent)
Boley (absent)

Grubb, Chairman
Burk
Faircloth
Roop
Love
Gallagher

The meeting was reconvened by Mr. Wooton, Co-Chairman.

Mr. Roop moved that the rule proposed by the Division of Tax, Consumers Sales and Service Tax and Use Tax, be laid over until the Committee's January meeting. The motion was adopted.

Mr. McThomas reminded the Committee that the rule proposed by the Division of Tax, Appraisal of Producing and Reserve Oil and Natural Gas Property for Periodic Statewide Reappraisals for Ad Valorem Property Tax Purposes, had been laid over at the Committee's November meeting. He told the Committee that he had notified the various interested parties that the proposed rule would be on the Committee's agenda as requested by the Committee. Jerry Knight, Division of Tax, answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas explained the rule proposed by the Division of Tax, Soft Drinks Tax, and stated that the Division had agreed to technical modifications. Alan Mierke, Assistant State Tax Commissioner, Keith Larson, Division of Tax, Charlie Lorenson, representing Miller Brewing, and Larry Swan representing the West Virginia Soft Drink Association addressed the Committee regarding the proposed rule and answered questions from the Committee.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted. Mr. Gallagher voted "No".

Mr. McThomas reviewed his abstract on the rule proposed by the Division of Tax, Severance Tax, and stated that the Division had agreed to technical modifications. Lydia McKee, General Counsel, Revenue Operations, answered questions from the Committee.

Mr. Manchin moved that the proposed rule lie over until the Committee's January meeting. The motion was adopted.

Mr. McThomas explained the rule proposed by the Division of Tax, Corporation Net Income Tax, and stated that the Division had agreed to technical modifications.

Mr. Roop moved that the proposed rule be approved as modified. The motion was adopted.

Mr. McThomas reviewed the rule proposed by the Division of Tax, Business Franchise Tax, and stated that the Division had agreed to technical modifications. Mark Morton, Division of Tax, responded to questions from the Committee.

Mr. Love moved that the proposed rule be approved as modified. The motion was adopted.

The meeting was adjourned.

ROLL CALL - LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

DATE: 12/10/91

TIME: 10:00 AM

NAME

Chambers, Robert "Chuck", Speaker

Grubb, David, Co-Chair

Burk, Robert W., Jr.

Faircloth, Larry V.

Brian A. Gallagher

Love, Sam

Roop, Jack

Burdette, Keith, President

Wooton, William, Co-Chair

Chafin, Truman H.

Manchin, Joe, III

Tomblin, Earl Ray

Boley, Donna

Wiedebusch, Larry

TOTAL

| Present | Absent | Yeas | Nays |
|---------|--------|------|------|
| | | | |
| ✓ | | | |
| ✓ | | | |
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RE: _____
