



WEST VIRGINIA STATE TAX DEPARTMENT

PROPERTY TAX DIVISION PUBLICATION

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APPEALING CLASSIFICATION OF YOUR PROPERTY

Introduction

The purpose of this publication is to inform property owners of when and how they may appeal the classification of their real and personal property for property tax purposes.

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Appealing Your Property Classification

If you disagree with the assessor's classification of your property, you have the right to appeal.

This publication provides an overview of property tax classification appeal process to the State Tax Commissioner.

Key Definitions

"Assessment day" means the July 1 preceding the next calendar year.

"Assessment year" means the period beginning July 1 of the current calendar year and ending June 30 of the next calendar year.

"Property tax year" means the period beginning January 1 of the calendar year and ending December 31 of that calendar year.

Property Classifications

The levy rate on your property is determined by the tax class of the property, which in turn depends on the particular use of the property. The four classes of property under West Virginia law are:

Class I. All tangible personal property employed exclusively in agriculture, including horticulture and grazing;

All products of agriculture (including livestock) while owned by the producer;

All notes, bonds, bills and accounts receivable, stocks and any other intangible personal property;

Class II. All property owned, used and occupied by the owner exclusively for residential purposes;

All farms, including land used for horticulture and grazing, occupied and cultivated by their owners or bona fide tenants;

Class III. All real and personal property situated outside of municipalities, exclusive of Classes I and II;

Class IV. All real and personal property situated inside of municipalities, exclusive of Classes I and II.

Assessment Date

The classification of real property, except public utility property, is determined annually, as of July 1 of the calendar year, by the assessor of the county in which the property is located.

Example: If the property tax year is calendar year 2020, the classification of property is determined as of July 1, 2019.

**Settling Disagreements
on Property Classification**

You may contact your county assessor's office after the July 1st assessment date if you have questions about the tax classification of your property for the next tax year. Property owners can often settle disagreements at this level without continuing the appeal process.

If you wish to appeal the assessor's classification of your property, you must file objections in writing with the assessor. If your appeal is denied, you may request, in writing, that the assessor *certify the question* to the State Tax Commissioner for ruling.

Please note that the Tax Commissioner is required by law to complete all rulings on the classification of property by February 28th of the calendar year. Therefore, if you plan to protest the classification determined by the county assessor, you should do so as early as possible. If the request arrives too late for a ruling to be issued, the assessor's ruling will stand, and you may lose your right to any further appeal for that tax year.

**Assessor Determines
Assessed Value**

The county assessor determines the assessed value of your real and tangible personal property.

The county assessor is required to visit each parcel of real property in his or her county every three years. During that three-year period the county assessor is required to maintain the assessed values of property in his or her county. The West Virginia Constitution mandates equal and uniform taxation throughout the State. Because of the requirement to maintain property values, the assessed value of your property may increase even though the assessor's office did not visit your property.

A change in the classification of your property may result in a higher assessed value of the property. If that is the case, a Change of Value Notice will be sent to you if the increase is 10% or more, or \$1,000 or more, when compared with the assessed value of the property for the immediately preceding property tax year. County assessors are required to send this notice on or before January 15th of the property tax year. See W. Va. Code § 11-3-2a.

The Significance of Property Classification

The percentage of tax you pay on your property depends on the classification of the property. The four classifications of property are set in the Constitution as are the maximum levy rates. The classes and maximum levy rates, are:

Class 1 – 0.5% (50 cents per 100 dollars' assessed value)

Class 2 – 1.0% (one dollar per 100 dollars' value)

Class 3 – 1.5% (one- and one-half dollars per 100 dollars' value)

Class 4 – 2% (two dollars per one hundred dollars' value)

Thus, Class II is considered a preferential tax classification for residential property because its maximum levy rate is one half the levy rate for Class IV property.

Common Reasons For Denial of Class II

Class II property includes “property owned, used and occupied by the owner exclusively for residential purposes.”¹ Disputes generally arise from three issues:

- Who is the owner of the property as of the assessment date?
- Who is the primary occupant of the property?
- Is the property used exclusively for residential purposes?

Who Owns the Property?

The West Virginia Code provides that,

The taxes upon all property shall be paid by those who are the owners thereof on the assessment date whether it be assessed to them or not. See W. Va. Code § 11-3-1.

Absent any better information, the assessor may assess the property to the party who is the owner of record as of July 1. When property is sold after the assessment date, the apportionment of taxes for the ensuing tax year should be handled by agreement between the buyer and seller at the property closing. Otherwise, the party who owned the property on the assessment date will be liable for the taxes.

¹ Farmland, which is also Class II property is treated in a separate publication on the Property Tax website.

Property that is being sold under a land contract which is not recorded until after the July 1 assessment date will be assessed to the owner of record, regardless of who is in actual possession of the property; this may also result in the property's being re-classified, as it may no longer be deemed "owner-occupied."

Who is the Primary Occupant of the Property?

Property that is occupied by anyone other than the owner or the owner's spouse is not deemed "owner-occupied," and is therefore ineligible for Class II treatment.

For example:

Owner purchases property in College Town for his children to reside in while attending University. The property will be Class IV property, as it is not occupied by the Owner.

Owner spends weekends and game days in the College Town house where his children reside. Although this is occupancy by the owner, the primary occupants remain the Owner's children, and the house will remain Class IV.

Owner provides living quarters in his own home for his Mother-In-Law. The property will be Class II, as it is primarily occupied by the Owner.

Owner builds a separate house on his property for his Mother-In-Law. In this case, the second house is primarily occupied by a person other than the owner and will not be eligible for Class II treatment.

Is the Property Used Exclusively for Residential Purposes?

Neither the West Virginia Code, nor the legal precedents of the Courts provide a clear-cut definition of "residential purposes." The Code does state:

"Used and occupied by the owner thereof exclusively for residential purpose" means actual habitation by the owner or the owner's spouse ... as a place of abode to the exclusion of any commercial use ...

See W. Va. Code § 11-4-3(a)(2). However, the commercial use of the property may not entirely exclude it from Class II treatment. When a portion of property is used as the owner's residence, and a portion is used for commercial purposes, the assessor may separately assess the two, by square feet. This is referred to as "split-listing." This means that a portion of the property is classified as Class II property while the rest is Class III or IV property depending upon whether the property is located within or outside a municipality.

For example:

Owner resides in the house for most of the year but rents it out to guests during holidays and special occasions. The rental constitutes a commercial use of the property, rendering it ineligible for Class II treatment.

Owners have a “guest room” which they rent out on a regular basis while they continue to reside in the house. The property is eligible for split-listing. The portion of the house, in square feet, that is rented out will be Class III or IV, as the case may be, while the portion occupied exclusively by the owners will continue to be Class II.

Owners have a guest room in their residence to accommodate their friends from out of town, rent-free. This is considered an ordinary residential use of the property by its owners and will not result in a reclassification of the property.

Owners have a second home which they use as a vacation retreat and hunting lodge. As long as it is so used exclusively by the Owners, it will be Class II. The law does not require property to be the Owners’ *primary* residence; it only requires that the *primary use* of the property be for the Owners’ own residential purposes.

Owner operates a Law Office on the first floor of the property, while residing on the second floor. In this case, the Law Office may be separately assessed as Class III or IV, as the case may be, while the remainder of the property which is used as the Owner’s residence is still afforded Class II treatment.

Owner makes pottery in the basement of her house, which she sells at local craft fairs. The property remains Class II.

Owner makes pottery in the basement of his residence which he sells directly to retail customers from his studio. The portion of the house, in square feet, that makes up the studio will be Class III or IV, as the case may be, while the residential portion will remain Class II.

Owner has two mobile homes on a single tract. Owner and spouse reside in one, while the other is used as a kennel for their dogs. The mobile home occupied primarily by the dogs is not eligible for Class II treatment.

Two houses occupy one tract. One is used by the Owners as their residence, while the other is used by them for storage of personal belongings. Storage of one’s personal belongings is an ordinary residential use of property and will not result in a reclassification.

Property Owned by a Business Entity

Property owned by a corporation or an unincorporated business, such as a partnership or LLC, is not eligible for Class II treatment, for the following reasons.

The statutory definition of “used and occupied by the owner thereof exclusively for residential purpose” presupposes use of the property by natural persons since the

definition requires “actual habitation ... as a place of abode.” W. Va. Code § 11-4-3((a)(2). A corporation or other business entity may be treated as a “person” for other legal purposes, it cannot inhabit a residence as a place of abode. For that reason, it is not eligible for Class II treatment.

Additionally, corporations, partnerships and limited liability companies (LLCs) are, by definition, business organizations, created and operated for carrying on revenue-generating activities. Therefore, the use of property by such a business entity is presumed to be for commercial purposes, which would also disqualify it from receiving Class II treatment.

For example:

Corporation owns Mansion, which it provides, free of charge, as a residence for its Chief Executive Officer. The property is not “owner occupied,” and therefore is not eligible for Class II treatment.

Single-member LLC owns property where the Single Member resides. The LLC has a separate legal existence from the Single Member; therefore, the property is not “owner-occupied,” and is not eligible for Class II treatment.

Filing an Appeal

To file an appeal of an assessor’s classification of property, you must request in writing that the assessor certify the question to the State Tax Commissioner for a ruling. If both parties agree as to the facts, they may submit a statement sworn to by both parties. Otherwise, separate sworn statements may be submitted. The Tax Commissioner has authority to pursue any inquiry and procure any information necessary for the disposition of the issue.

The Tax Commissioner must issue a ruling on or before February 28 of the tax year. The Commissioner’s ruling is binding on both the assessor and the taxpayer, but either party appeal to the circuit court of the county where the property is located. The appeal must be filed within 30 days after the Commissioner’s ruling is received.

Please note that you cannot appeal the classification of property after the property books are turned over to the county sheriff.

Information Required in Appeal

The appeal to the Tax Commissioner is a relatively informal procedure, and any written statement signed by the Taxpayer is considered a “sworn statement” in compliance with the statute. The statement does not need to be formally witnessed or notarized, and you do not need to submit it through an attorney.

Your statement should include:

- The identification of the property, either by street address or by the map and parcel number used by the assessor.
- Information concerning the ownership of the property as of the assessment date.

- Information concerning all uses of the property.
- Information concerning who occupied the property as of the assessment date.
- A concise statement of why you believe the assessor's classification of the property was incorrect.

Appealing the Commissioner's Decision

You or the assessor may appeal the Tax Commissioner's ruling to the circuit court of the county in which the property is located.

Your appeal must be filed with the county circuit court within 30 calendar days of the date you received the Tax Commissioner's ruling. You should contact the clerk of the circuit court for local court rules on filing an appeal to the circuit court.

Laws and Regulations

Some relevant sections of the West Virginia law are listed below. Copies of the Constitution and sections of the West Virginia Code are posted at the Legislature's website: <http://code.wvlegislature.gov/11-3/>

W. Va. Const. Art. X, §1. Taxation and Finance.

W. Va. Const. Art. X, §1b. Property Tax Limitation and Homestead Exemption Amendment of 1982.

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

W. Va. Code § 11-3-2. Canvass by assessor; lists of property.

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

W. Va. Code § 11-3-8. Who deemed owner for purposes of taxation.

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

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

W. Va. Code § 11-3-27. Relief in county commission from erroneous assessments.

W. Va. Code § 11-4-2. Form of land books.

W. Va. Code § 11-4-3. Definitions.

Copies of legislative rules for the property tax are available at the Secretary of State's webpage: <http://apps.sos.wv.gov/adlaw/csr/>

There is currently no legislative rule on the classification of residential or commercial property.

Need More Information?

If you have questions about the appeal process or need help in completing the appeal form, contact the assessor or clerk of the county commission for the county in which the property was located on the July 1st assessment date.

Note: This publication is intended to provide general information. It does not alter or supersede any West Virginia laws or rules promulgated by the State Tax Department.