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Office of West Virginia
Secretary Of State

NOTICE OF PUBLIC COMMENT PERIOD

AGENCY: Tax

TITLE-SERIES: 110-01J

RULE TYPE: Legislative

Amendment to Existing Rule: Yes

Repeal of existing rule: No

RULE NAME: VALUATION OF PRODUCING AND RESERVE OIL AND NATURAL GAS PROPERTY FOR AD VALOREM PROPERTY TAX PURPOSES

CITE STATUTORY AUTHORITY: W. Va. Code §§11-1C-5(b), 11-1C-5a, and 11-1C-10(d)

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 09/21/2020 10:00 AM

COMMENTS MAY BE MAILED OR EMAILED TO:

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PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

The rule addresses the process of valuing producing and reserve oil and gas property for ad valorem property tax purposes.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

Changes to the existing rule add, delete or amend several definitions and add, delete or amend other provisions to reflect changes in the oil and gas industry since 2005, and clarify the handling of numerous issues.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

This legislative rule updates and provides additional guidance for the Valuation of Producing and Reserve Oil and Natural Gas Property for Ad Valorem Property Tax Purposes. Estates in oil or natural gas, or both are among the several estates in real property that may be owned either separately or in conjunction with other estates. If oil or natural gas is owned as a separate estate, either absolute, as a leasehold, or in conjunction with other estates, West Virginia property tax law requires that ownership be listed, valued and taxed in proportion to its value to be ascertained as directed by law. If oil or natural gas is owned in conjunction with an undivided or fee interest in an estate, the value of the oil or natural gas shall be included in the value of that estate. Oil and natural gas and other natural resources may be owned without being produced. Oil or natural gas title may exist where no oil or natural gas is known to be present, or where the oil or natural gas is unproducible or depleted.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

This legislative rule updates and provides additional guidance for the Valuation of Producing and Reserve Oil and Natural Gas Property for Ad Valorem Property Tax Purposes. Estates in oil or natural gas, or both are among the several estates in real property that may be owned either separately or in conjunction with other estates. If oil or natural gas is owned as a separate estate, either absolute, as a leasehold, or in conjunction with other estates, West Virginia property tax law requires that ownership be listed, valued and taxed in proportion to its value to be ascertained as directed by law. If oil or natural gas is owned in conjunction with an undivided or fee interest in an estate, the value of the oil or natural gas shall be included in the value of that estate. Oil and natural gas and other natural resources may be owned without being produced. Oil or natural gas title may exist where no oil or natural gas is known to be present, or where the oil or natural gas is unproducible or depleted

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

No additional administrative costs are anticipated

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2020 Increase/Decrease (use "-")	2021 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	0
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

No additional administrative costs are anticipated

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Allen R Prunty -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 110
LEGISLATIVE RULE
STATE TAX DEPARTMENT

SERIES 1J
VALUATION OF PRODUCING AND RESERVE OIL AND NATURAL GAS PROPERTY FOR AD VALOREM PROPERTY TAX PURPOSES

§110-1J-1. General.

1.1. *Scope*. -- This rule provides the mass appraisal methodology the State Tax Commissioner shall use to determine the appraised value of producing any reserve oil and natural gas properties for ad valorem tax purposes.

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

1.3. *Filing date*. -- ~~May 5, 2005~~.

1.4. *Effective date*. -- ~~June 1, 2005~~ This rule applies to tax years beginning on or after January 1, ~~2006~~ 2022.

1.5. *Sunset Provision*. -- This rule shall terminate and have no further force or effect upon the expiration of five years from its effective date.

§110-1J-2. Introduction.

Estates in oil or natural gas, or both ~~is~~ are ~~one of~~ among the several estates in real property ~~which~~ that may be owned either separately or in conjunction with other estates. If oil or natural gas is owned as a separate estate, either absolute, as a leasehold, or in conjunction with other estates, West Virginia property tax law requires that ownership be listed, valued and taxed in proportion to its value to be ascertained as directed by law. If oil or natural gas is owned in conjunction with ~~other estates~~ an undivided or fee interest in an estate, the value of the oil or natural gas shall be included in the value of ~~the other~~ that estate. Oil ~~or~~ and natural gas and other natural resources may be owned without being produced. Oil or natural gas title may exist where no oil or natural gas is known to be present, or where the oil or natural gas is unproducible or depleted.

2.1. Categories for valuing oil or natural gas properties or both. -- Parcels of property bearing or having the potential to bear oil or natural gas (or both) or having the oil or natural gas (or both) mineral ~~interest~~ interests separated from the fee of the property shall be categorized as:

2.1.1. producing property (to include home ~~use/industrial~~ use, farm use and industrial use-on-property consumption);

2.1.2. non-producing property;

2.1.3. barren property; or

2.1.4. plugged or abandoned well property or well property that is both plugged and abandoned.

§110-1J-3. Definitions.

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

3.1. "Abandoned well" means any well which is required to be plugged under the provisions of W. Va. Code §22-6-19.

3.2. "Appraised value" means the value of oil and gas real and personal property determined in accordance with this rule.

3.3. "Area" means a geographic region at least as large as the defined limits of an oil or gas (or both) field, from which well output has similar quality, and economic, and legal characteristics.

3.4. "Assessment date" means the July 1 date preceding the start of the property tax year.

3.5. "Average annual operating and post production expense" means the weighted annual cost of operating and post-production expenses, determined as a weighted average dollar amount per MCF of gas produced, or per barrel of oil produced, or per barrel of natural gas liquids produced for each category and subcategory of well listed in section heading 10 of this rule.

~~3.1~~ 3.6. "Bands of investment discount component" means a discount rate derived by assigning rates to various debt and equity investment financing tiers and summing these rates, weighted by their respective percentages of total financing specified in the annual variables filed pursuant to section heading 11 of this rule.

3.7. "Barrel" or "BBL" means a unit of measurement of volume equal to 42 US gallons.

~~3.2~~ 3.8. "Barren oil and natural gas property" means those acres, tracts and parcels owned in fee ~~and mineral parcels~~ in West Virginia where data suggests with reasonable certainty that the presence of oil and natural gas is very unlikely.

~~3.3~~ 3.9. "Capitalization rate" means a rate used to convert an estimate of income to an estimate of market value. Section heading 4 of this rule further explains this term.

3.10. "Coalbed methane" means methane gas, and other well output which can be produced from a coal seam, the rock or other strata in communication with a coal seam, a mined-out area or a gob well.

~~3.4~~ 3.11. "Commissioner" or "Tax Commissioner" means the Tax Commissioner of the State of West Virginia, or his or her delegate.

3.12. "Commonly metered wells" means two or more wells that share the same meter.

3.13. "Communitized area" means an area involving more than one lease where a cooperative agreement or legal mandate, with or without such agreement, is developed or imposed for the drilling and operation of a single or multiple oil or gas wells, or both, by one or more operators in accordance with a State or Federal spacing statute, regulation, order, requirement, agreement or guideline addressing or relating to well density, pooling or spacing.

3.14. "Compression" means the process of raising the pressure of gas.

3.15. "Condensate" means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without processing. For purposes of this rule, condensate, along with certain other components of well output, constitutes a natural gas liquid.

3.16. "Conventional well" means a vertical well as defined in this section.

3.17. "Discount rate" means the rate used to determine the present net worth of one dollar for purposes of this rule.

3.18. "Dry gas" means raw gas that is not wet gas as defined in this rule.

3.19. "Field" means a geographic region situated over one or more subsurface oil and gas reservoirs encompassing at least the outermost boundaries of all oil and gas accumulations known to be within those reservoirs vertically projected to the land surface.

~~3.6~~ 3.20. "Flat Rate royalty" means a royalty rate in which the amount paid per year (e.g. $100 per year) is set within a lease and is not ~~dependant~~ dependent on the production or income derived from the well.

~~3.7~~ 3.21. "Flush production" means the production of oil ~~and/or~~ or natural gas or both from any well on an oil ~~and/or~~ or natural gas property or a property that has or produces both oil and natural gas with an initial production date that is two (2) calendar years or less prior to the July 1st assessment date. Production beginning after December 31st and prior to the July 1st assessment date must be reported.

3.22. "Gas" means natural gas as defined in this rule.

3.23. "Gas plant products" means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas, excluding residue gas.

3.24. "Gathering" means the movement of lease production to a central accumulation or treatment point or both on the lease, unit or communitized area.

3.25. "Gathering line" means a pipeline that transports gas from a current production facility to a transmission line, also known as a main line.

3.26. "Gob well" means a well drilled or vent hole converted to a well which produces or is capable of producing coalbed methane or other natural gas from a distressed zone created above and below a mined-out coal seam by any prior full seam extraction of the coal.

~~3.8. "Gross receipts" means total income received from production on any well, at the field line point of sale, during a calendar year before subtraction of any royalties and/or expenses.~~

3.27. "Horizontal well" or "directional well" -- For purposes of this rule, and notwithstanding the definitions set forth in W. Va. Code §§22-6A-4 and 22-6B-6, the term "horizontal well" or "directional well" means a well, the wellbore of which is initially drilled on a vertical or directional plane and which is curved to become horizontal or nearly horizontal, in order to parallel a particular geological formation and which may include multiple horizontal or stacked laterals.

3.28. "Lateral" means that portion of a directional well that is past the point where the well bore has been intentionally departed from the vertical.

3.29. "Lessee" means one who holds oil or gas (or both) real property under a lease and who is obligated to make royalty or other payments under the lease. "Lessee" also includes an assignee under the lease and any person to whom operating rights in a lease have been assigned.

3.30. "M.C.F." or "MCF" when used with respect to natural gas, means 1,000 cubic feet of natural gas measured at a pressure of 14.73 pounds per square inch (absolute) and a temperature of 60 degrees Fahrenheit.

~~3.9~~ 3.31. "Management rate" means a rate reflecting a return to an investor for the management of similar investment portfolios.

3.32. "Methane" means the chief constituent of natural gas.

3.33. "Natural gas" means natural gas, natural gas liquids, liquefied natural gas, coalbed methane, synthetic gas usable for fuel or mixtures of natural gas and synthetic gas.

3.34. "Natural gas liquids" means the hydrocarbon components: propane, ethane, butanes, and pentanes (also referred to as condensate), or a combination of them that are subject to recovery from raw gas liquids by processing in field separators, scrubbers, gas processing and reprocessing plants, or cycling plants.

~~3.10~~ 3.35. "Natural gas producing property" means the property from which natural gas has been produced or extracted at any time during the calendar year preceding the July 1 assessment date. Natural gas producing property includes the interest or interests underlying an area of up to one hundred twenty-five (125) acres of surface per conventional well for property with active wells on the parcel; and unitized acres of surface per horizontal well for property with one or more active wells. All acreage of a natural gas producing property in excess of one hundred twenty-five (125) acres per conventional well, or the unitized acres per horizontal well, shall be valued at the non-producing rate per acre referenced in section 47.4 of this rule.

~~3.11~~ 3.36. "Nonliquidity rate" means a rate reflecting a return to an investor representing the loss of interest on an investment arising from the time required to sell the investment.

3.37. "Non-producing" means any of the following:

3.37.1. Proven developed non-producing;

3.37.2. Proven undeveloped; and

3.37.3. Undeveloped.

~~3.12~~ 3.38. "Non-Producing or Shut-in Well" means a well, which due to the producer's decisions, market reasons ~~and/or~~ or product performance, or any other reason or combination of reasons, was non-productive during the entire most recent calendar year preceding the July 1st assessment date.

3.39. "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir.

~~3.13~~ 3.40. "Oil and/or natural gas, non-producing property" means properties that were not engaged in production of well output, as herein defined, during the calendar year next preceding the July 1 assessment date. This category includes any acreage that has been shut-in for the entire year.

~~3.14~~ 3.41. "Oil and/or natural gas plugged and abandoned property" means plugged and abandoned oil and/or natural gas wells.

~~3.15~~ 3.42. "Oil producing property" means property from which oil has been produced or extracted at any time during the calendar year preceding the July 1 assessment date. Oil producing property includes the interest or interests underlying an area of up to forty (40) acres of surface per conventional well with one (1) or more active conventional well(s) on the parcel; and up to the filed unitized acreage per horizontal well with one (1) or more active horizontal wells on parcel. All acreage of an oil producing property in excess of forty (40) acres per conventional well, and the filed unitized acreage per horizontal well, shall be valued at the non-producing rate per acre referenced in section heading ~~4.~~7 of this rule.

~~3.16~~ 3.43. "Operating expenses" means only those ordinary expenses which are directly related to the maintenance and production of natural gas and/or oil, commonly referred to as lease operating expenses. These expenses do not include extraordinary expenses, depreciation, ad valorem taxes, capital expenditures or expenditures relating to vehicles or other tangible personal property not permanently used in the production of natural gas or oil.

~~3.17~~ 3.44. "Overriding royalty" means the fractional interest in the gross production payable to a person who is neither the producer nor the owner of the oil and or natural gas estate and who is not required to bear a share of the development or operating costs of the well.

~~3.18~~ 3.45. "Personal property" used in oil or natural gas production means machinery and equipment in and about the well ~~and all other tangible personal property~~ used in oil production ~~and/or~~ or natural gas production, or production of both from the well. Personal property includes machinery and equipment owned by the producer located at the well up until the first in-line sales meter for each product produced by the producer who is required to file a West Virginia Oil and Gas Producer/Operator Return under section heading 9 of this rule, which may include but not be limited to, meters, tanks, compressors and gathering pipeline. It shall not include vehicles or other tangible personal property not permanently used in production and located in and about the well nor shall it include 3rd party equipment used to enhance or remarket the gas after the first metered sale.

3.46. "Plant gas products" means separate marketable elements, compounds, or mixtures, whether in liquid, gaseous, or solid form, resulting from processing gas, excluding residual gas.

3.47. "Plugged and abandoned well property" means plugged and abandoned wells that produced or were intended to produce well output, as herein defined, without regard to whether the well historically produced well output or was a so called "dry hole" that failed to produce well output.

3.48. "Pooling" means the bringing together of separately owned interests for the common development and operation of a drilling unit.

3.49. "Post-production expense" means an expense or cost subsequent to production including, but not limited to, an expense or cost related to severance taxes, pipelines, surface facilities, telemetry, gathering, dehydration, transportation, fractionation, compression, manufacturing, processing, treating or marketing of oil or natural gas and their constituents.

3.50. "Processing" means any process that takes place away from the well or lease that is designed to separate and remove elements or compounds (hydrocarbon and nonhydrocarbon) from gas, including absorption, dehydration, separation or refrigeration. Field processes which normally take place on or near the lease, such as natural pressure reduction, separation, heating, cooling, dehydration at the well, and compression at the well, are not considered processing. The changing of pressures or temperatures, or both in a reservoir is not considered processing.

~~3.19~~ 3.51. ~~"Producer/operator"~~ "Producer" or "operator" means any person or persons, corporation, partnership, joint venture or other enterprise or entity ~~which~~ that proposes to or does locate, drill, produce, manage, or abandon any well. "Producer" or "operator" includes, but is not limited to, lessees, as herein defined, and any person or persons, corporation, partnership, joint venture or other enterprise or entity that owns the economic interest in the natural resource produced, as the term economic interest is defined in §110-13A-1 et seq., Code of State Rules.

3.52. "Production" means the total production of oil and/or gas from a single well and includes production through secondary recovery methods such as where mechanically induced pressure, such as air, nitrogen, carbon dioxide, or water pressure, is used to stimulate and maintain production in the oil and/or gas reservoir, exclusive of any flush production. For commonly metered wells, "production through secondary recovery methods" means total production from all wells with production through secondary recovery methods divided by the number of those wells.

3.53. "Property owner" means the person or persons who own the natural gas or oil in place, except where a different meaning is required by the context in which "property owner" is used in this rule.

~~3.20~~ 3.54. "Property tax component" means an element in the determination of a rate reflecting a provision for returning to an investor a sum of money equal to property taxes paid over the economic life of an investment.

3.55. "Rate" means a charge, payment or accrued amount, calculated and determined with reference to a formula, algorithm, scale, standard, procedure, or a series thereof, and having one or more elements and components in deriving that amount. Depending on context, the term "rate" may mean either the amount so determined, or the means of deriving that amount.

3.56. "Raw gas" or "raw natural gas" means natural gas as it is produced from the underground reservoir.

~~3.21~~ 3.57. "Recapture component" means an element in the determination of a rate reflecting a provision for returning to an investor a sum of money equal to his or her investment.

3.58. "Regional" means the oil and gas markets that serve West Virginia.

3.59. "Residue gas" means that hydrocarbon gas consisting principally of methane resulting from processing gas.

~~3.22~~ 3.60. "Risk rate" means a rate reflecting a return to an investor necessary to attract capital to an investment containing a possible loss of principal ~~and/or~~ or interest, or both.

~~3.23~~ 3.61. "Royalty interest" means the fractional interest in oil ~~and/or~~ or natural gas production, or both, that ~~is~~ may or may not be subject to development costs or operating expenses and extends undiminished over the life of the property. Typically, it is retained by the oil ~~and/or~~ or natural gas rights owner or lessor of the oil or natural gas, or both.

3.62. “Royalty owner” means any owner in place of oil or natural gas and their constituents, owners of oil or natural gas leasing rights, and owners vested with any leasehold estate less than twenty-five (25) percent of the total, to the extent that the owners are not an operator as defined in this section heading. A royalty owner does not include a person whose interest is limited to: (A) a working interest in a wellbore only; (B) overriding royalties; (C) nonparticipating royalty interests; (D) nonexecutive mineral interests; or (E) net profit interests.

~~3.24~~ 3.63. "Safe rate" means a rate reflecting a return to an investor on an investment which has little, if any, likelihood of loss of principal or of loss in anticipated return on investment.

~~3.25. "Settled production" means the production of oil and/or or natural gas, or both from all wells on a property with an initial production date that is more than two (2) calendar years prior to the July 1st assessment date.~~

~~3.26~~ 3.64. "Storage wells" means drilled and completed wells on any property used for the artificial injection or storage of natural gas into a natural reservoir strata.

~~3.27~~ 3.65. "Sum of the Years digit" means the weighted average that will be used in the calculations. For a three-year weighted average, the sum of the years digit method places the first year at 50 percent, the second year at 33.33 percent and the third year at 16.67 percent.

~~3.28~~ 3.66. "Summation discount component" means a discount rate expressed as the aggregate of a safe rate, risk rate, nonliquidity rate, and management rate, adjusted for inflation.

3.67. "Total production" means the total amount of oil and natural gas liquids, measured in barrels, and the total amount of gas, measured in MCF, of all oil and gas actually produced and sold from a single well that is developed and producing on the assessment date. For commonly metered wells, "total production" means the total amount of oil and natural gas liquids, measured in barrels, and the total amount of gas, measured in MCF, of all oil, natural gas liquids, and gas actually produced and sold from the commonly metered wells divided by the number of the commonly metered wells.

3.68. “Transmission line” or “main line” means a pipeline, other than a gathering line, that: (1) transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not down-stream from a distribution center; (2) operates at a hoop stress of twenty (20) percent or more of SMYS; or (3) transports gas within a storage field.

3.69. “Unitization" means the combining of tracts and interests necessary to establish a field-wide area for the cooperative development or operation of all or part of a reservoir of natural gas and/or oil.

3.70. "Vertical well" means any well producing gas or oil, or both gas and oil, that is not a horizontal well as defined in this rule. Vertical wells are also known as conventional wells.

~~3.29~~ 3.71. "Well" means any shaft or hole sunk, drilled, bored, or dug into the earth or into underground strata for the extraction of oil or gas or well products.

3.72. "Well pad" means the area that is cleared or prepared for drilling of one or more wells.

3.73. "Well output" means oil, or natural gas, or natural gas liquids, or any other natural resource produced from a well or any combination thereof.

3.74. "Wet gas" means raw natural gas that contains a relatively high proportion of condensable hydrocarbon fractions in a given quantity of raw natural gas produced. Such fractions may include, but are not limited to ethane, butane, iso-butane and propane. Natural gas containing more than 0.1 U.S. gallons of total condensable hydrocarbon fractions per MCF at a temperature of 15 degrees Celsius (59 degrees Fahrenheit) and a pressure of 750 millimeters of mercury, is classified as wet gas for purposes of this rule. For purposes of this definition, methane, water, nitrogen, carbon dioxide, hydrogen sulfide and helium do not constitute condensable hydrocarbon fractions.

~~3.30~~ 3.75. "Working interest" means the fractional interest in oil production ~~and/or~~ or natural gas production, or both subject to development and operating expenses and owned by the leaseholder ~~and/or~~ or operator, or both.

~~**§110-1J-4. Methods of Valuation.**~~

~~4.1. General. Oil and/or natural gas producing property value shall be determined through the process of applying a yield capitalization model to the net receipts (gross receipts less royalties paid less operating expenses) for the working interest and a yield capitalization model applied to the gross royalty payments for the royalty interest. Where ownership is split through a lease or royalty arrangement, different values shall be determined for the working interest and the royalty interest. If the well produced for less than twelve (12) months during the first calendar year of production, or during the first calendar year of production after being shut-in during the previous calendar year, the gross receipts and royalties paid shall be annualized prior to the process of applying a yield capitalization rate. Each term in this valuation is discussed below.~~

~~4.2. Percentage interest in oil and/or natural gas. Where the ownership of oil and/or natural gas in place is divided through a lease or other arrangement, the compensation to the owner of the property is derived by designating a percentage (generally one eighth) of the production income to be the royalty payment to the owner. The remainder (generally seven eighths) is the working interest. The Tax Commissioner shall annually determine working and royalty percentage interests on a per well or lease basis, through a review of oil and natural gas producer/operator annual property tax returns. These percentages shall be determined annually by dividing the total royalty paid by the reported gross income.~~

~~4.3. Average industry operating expenses. The Tax Commissioner shall every five (5) years, determine the average annual industry operating expenses per well. The average annual industry operating expenses shall be deducted from working interest gross receipts to develop an income stream for application of a yield capitalization procedure.~~

~~4.4. Average industry production decline rates. The Tax Commissioner shall every five (5) years derive and report the average industry production decline rates by reviewing well production records of various State agencies along with data provided by companies and individuals.~~

~~4.5. Capitalization rate. A single statewide capitalization rate for oil and natural gas shall be determined annually by the Tax Commissioner through the use of generally accepted methods. The rate shall be based on the assumption of a declining terminal, non-inflating income series. The capitalization rate used to value oil and natural gas shall be developed through consideration of: (1) a discount rate determined by the summation technique, and (2) a property tax component.~~

~~4.5.1. Discount component.~~

~~The summation technique shall be used in developing a discount component of the capitalization rate. The five subcomponents of the discount rate are;~~

~~4.5.1.a. Safe rate. The "safe rate" shall reflect a rate of return that an investor could expect on an investment of minimal risk. It shall be developed through review of interest rates offered on thirteen (13) week United States Constant Maturity Treasury Yields for a period of three (3) calendar years immediately prior to the July 1st assessment date. A weighted average (sum of years digits) will be used in order to arrive at a Safe Rate.~~

~~4.5.1.b. Risk rate The relative degree of risk of an investment in oil and natural gas property is difficult to determine from published interest rates. Interest rates required on loans for acquisition and/or development of oil and natural gas properties shall be calculated by adding two percent (2%) to the Prime Interest Rate Charged By banks as published in the Economic Indicators Prepared By The Council Of Economic Advisors For The Joint Economic Committee for the three (3) calendar years immediately prior to the July 1 assessment date. The loan rate shall be compared to quarterly interest rates offered on thirteen (13) week United States Constant Maturity Treasury Yields for the same three (3) calendar years period. The weighted average (sum of years digits) difference between the two, combined with bands of investment analysis, shall be used as a basis to estimate the risk rate;~~

~~4.5.1.c. Nonliquidity rate. The "nonliquidity rate" shall be developed through an annual survey to determine a reasonable estimate of time that oil and natural gas properties, when exposed to the market for sale, remain on the market. The time determined in this manner shall be used to identify United States Constant Maturity Treasury Yields with similar time differentials in excess of thirteen (13) week United States Constant Maturity Treasury Yields. The interest differential between these securities shall be used to represent the nonliquidity rate. For example, if it is determined that oil and natural gas property remains on the market for an average of nine months (39 weeks) before being sold, the nonliquidity rate shall be derived by taking the rate on one (1) year United States Constant Maturity Treasury Yields minus the rate on 13 week United States Constant Maturity Treasury Yields; The rate used will be a weighted average (sum of years digits) of the data from the three (3) calendar year periods prior to the July 1 assessment date.~~

~~4.5.1.d. Management rate. The "management rate" represents the cost of managing the investment, not the cost of managing the oil and natural gas property. Because the management rate has historically been one half of one percent (0.5%) of the value of investment portfolios, for purposes of determining the discount component the management rate shall be one half of one percent (0.5%); and~~

~~4.5.1.e. Inflation rate (negative). Nominal interest rates, including the "safe rate" mentioned in paragraph 4.5.1.a of this subdivision, are higher than real rates by an amount representing expectation of future inflation; however, net annual income from oil and natural gas property is to be estimated assuming level future royalties (no inflation). The capitalization rate shall be a real rate, net of expectation of inflation. The inflation rate shall be estimated through analysis of the most recent calendar~~

~~year's urban consumer price index as determined by the U.S. Department of Labor, Bureau of Labor Statistics. The weighted average (sum of years digits) rate will be used from the data of the three (3) calendar year periods prior to the July 1 assessment date.~~

~~4.5.2. In determining the discount component of the capitalization rate, the Tax Commissioner shall deduct the inflation rate from the sum of the safe rate, the risk rate, the nonliquidity rate and the management rate.~~

~~4.5.3. Property tax component. This component shall be estimated by multiplying the assessment rate by the prior tax year's statewide average for Class III property. At the present time, research indicates that royalty rates on oil and natural gas include a component for property tax, with no additional compensation from the producer. As a result, the property tax component shall be used in the capitalization rate; however, if this described general practice changes and property taxes are paid as additional compensation, the use of this component shall be deleted. The rate used will be a weighted average (sum of years digits) of the data from the three (3) tax year periods prior to the July 1 assessment date.~~

~~4.5.4. Results of capitalization rate survey A review of economic data for development of components referenced in Subdivision 4.5.1 of this rule shall be conducted annually and results filed by the Tax Commissioner in the State Register on or before July 1st of each year. Public comment on the published results shall be accepted until August 1st of each year with final results filed in the State Register on or before September 1st of each year.~~

~~4.6. Yield capitalization model. A yield capitalization model shall be developed for each producing property. The model shall use as a beginning point and include for each producing well, the gross receipts (both working interest and royalty interest) and production amounts based on those gross receipts from the most recent consecutive three (3) full production calendar years preceding the July 1 assessment date. These amounts will be weighted average (sum of years digits) and then adjusted for production decline to reflect the income available to the property owner beginning with the July 1st assessment date to June 30 next succeeding the assessment date. Gross receipts and production amounts shall be proportionately reduced by application of the appropriate production decline rate, referenced in Subsection 4.4 of this rule, to yield a declining terminal income series typical of the producing area and strata. The income series shall be apportioned to the working interest and to the royalty interest based upon percentage interests referenced in Subsection 4.2 of this rule. Where the well did not produce during the entire calendar year, the gross receipts and royalties paid will be annualized prior to the process of applying a yield capitalization procedure.~~

~~4.6.1. Working interest model. The working interest weighted average (sum of years digits) gross receipts income series referenced in Subsection 4.6 of this rule shall be reduced by the annual operating expenses referenced in Subsection 4.3 of this rule to yield a net working interest income series. The net working interest income series shall be discounted by applying, on an annual basis, a mid-year life Inwood factor reflecting the capitalization rate referenced in Subsection 4.5 of this rule. The summation of the annual discounted income streams shall be the market value estimate for the working interest of the producing oil and/or natural gas well including personal property as defined by Section 3 of this rule. The minimum appraised value for any producing well will not be less than the machinery and equipment value discussed in Section 4.16 of this rule. This minimum rate will not apply to home use only wells.~~

~~4.6.2. Royalty interest model. The royalty interest weighted average (sum of years digits) gross receipts income series referenced in Subsection 4.6 of this rule shall be discounted by applying, on an~~

~~annual basis, a mid-year life Inwood factor reflecting the capitalization rate referenced in Subsection 4.5 of this rule. This amount will then be proportionally distributed to each royalty owner based on the royalty percentage received during the most recent calendar year to the July 1 assessment date. The summation of the annual discounted income streams shall be the market value estimate for the royalty interest of the producing oil and/or natural gas well for an area of up to one hundred twenty-five (125) acres per producing natural gas wells and up to forty (40) acres per producing oil wells.~~

~~4.6.3. Valuation of home use only wells. — The appraised value of wells used for home use only will be an annual appraised value of $500.00 resulting in an assessed value of $300.00. If the home use well owner has ownership in the mineral rights, the assessed value will be added to the real property assessment. However, if the home use well owner only has rights in the surface, the assessed value will be added to the personal property assessment.~~

~~4.6.4. Valuation of industrial use wells. — The appraised value of wells used for industrial purposes only will be based on the actual most recent calendar year preceding the July 1 appraisal date MCF usage times the average West Virginia spot price for that calendar year determined by the "Natural Gas Monthly," published by the U.S. Department of Energy, Energy Information Administration.~~

~~4.7. Valuation of non producing acreage. — The value per acre of non producing acreage, which includes shut in wells, shall equal the discounted annual lease payment per acre. A valuation schedule for non-producing properties shall be determined annually by the Tax Commissioner for each district within a county, where data is available. The Tax Commissioner shall annually conduct a review of oil and/or natural gas lease agreements transacted at arms length in all fifty five (55) counties to determine the average annual delay rental lease payment per acre, and lease term. The per acre value for non-producing property shall be the sum of the projected annual income stream from delay rental during the lease term discounted in each year by a capitalization rate. A valuation of $1.00 per acre shall be used where property is located in those areas of the State where drilling activity/production have not been established and the property is presumed to be barren.~~

~~4.8. Valuation of plugged and abandoned acreage. — Plugged and abandoned acreage shall be valued to the oil or gas owner at the nominal rate of one dollar ($1.00) per acre. This category includes any plugged and abandoned acreage of up to one hundred twenty- five (125) acres per natural gas well and up to forty (40) acres per oil well.~~

~~4.9. Valuation of barren oil and natural gas areas. — These oil and natural gas areas (fee accounts) shall be valued at $1.00 per deed acre.~~

~~4.10. Valuation of wells that produce both oil and natural gas. — The valuation of wells that produce both oil and natural gas shall be determined by use of the methods described in this rule. These values shall then be summed to result in the overall value of the oil and/or natural gas producing acreage.~~

~~4.11. Valuation of storage well areas. – The valuation of storage well areas shall equal the discounted annual lease payment per acre that is applied to the reserve oil and gas acreage within the county. The minimum value applied to the areas will not be less than $5.00 per deed acre. The value shall not include inventories stored within. Natural gas storage inventories shall be assessed to the inventory owner.~~

~~4.12. Annual reports. — The Tax Commissioner shall on or before July 1st of each year publish and file in the State Register an annual summary of the variables to be considered in arriving at the value of the specific oil and/or natural gas related property. Public comments shall be accepted until August 1st of~~

~~each year with the final results filed in the State Register on or before September 1st of each year.~~

~~4.13. Farm properties. – The oil and gas rights, that are part of a "fee" estate where the use of the surface has qualified for farm use appraisal, shall be valued as described in the Tax Commission's rule, Valuation of Farmland and Structures Situated Thereon For Ad Valorem Property Tax Purposes, 110 C.S.R. 1A.~~

~~4.14. Property reports. – On or before August 1st of each year the producer shall file the West Virginia Oil and Gas Producer/Operator Return with the State Tax Commission, with acknowledgement to the county assessors in the counties where the oil and natural gas property is located. This Return form shall be designed by the State Tax Commissioner so that information pertinent to the valuation of the producing property, and plugged and abandoned property shall be reported properly by the oil and gas producer.~~

~~4.15. Confidentiality – All information provided by or on behalf of a natural resources property owner or by or on behalf of an owner of an interest in natural resources property to any state or county representative for use in the valuation or assessment of natural resources property or for use in the development or maintenance of a legislatively funded mineral mapping or geologic information system is confidential. The information is exempt from disclosure under the provisions of West Virginia Code § 29B-1-4, and shall be kept, held, and maintained confidential except to the extent the information is needed by the state tax commissioner to defend an appraisal challenged by the owner or lessee of the natural resources property subject to the appraisal: Provided, That this section may not be construed to prohibit publication or release of information generated as part of the minerals mapping or geologic information system, whether in the form of aggregated statistics, maps, articles, reports, professional talks, or otherwise presented in accordance with generally accepted practices and in a manner so as to preclude the identification or determination of information about particular property owners.~~

~~4.16. Valuation of the Producer's Personal Property at Non-Producing or Shut-In wells – The valuation of the producer's personal property that is part of a non-producing or shut-in well's appraisal will be assigned to the producer at the same value applied to home use only wells.~~

~~4.17. Valuation of Pre-Production/Permit Leaseholds – Chattel real accounts (personal property) for pre-production/permit leaseholds will be valued by the county assessor.~~

~~4.18. Valuation of Producing Flat-Rate Royalty accounts – The appraised value of a producing flat-rate royalty will be valued using a level terminal income series rather than the declining terminal income series as discussed in Subsection 4.6 of this rule.~~

§110-1J-4. Capitalization rate.

4.1. A single statewide capitalization rate for oil and natural gas shall be determined annually by the Tax Commissioner through the use of generally accepted appraisal methods. The rate shall be based on the assumption of a declining-terminal, non-inflating income series. The capitalization rate used to value oil and natural gas shall be developed through consideration of: (1) a discount rate determined by the summation technique, and (2) a property tax component.

4.1.1. Discount component.

The summation technique shall be used in developing a discount component of the capitalization rate.

The five subcomponents of the discount rate are:

4.1.1.a. Safe rate. -- The "safe rate" shall reflect a rate of return that an investor could expect on an investment of minimal risk. It shall be developed through review of interest rates offered on thirteen (13) week United States Constant Maturity Treasury Yields for a period of three (3) calendar years immediately prior to the July 1st assessment date. A weighted average (sum of years digits) will be used in order to arrive at a safe rate.

4.1.1.b. Risk rate -- The relative degree of risk of an investment in oil and natural gas property is difficult to determine from published interest rates. Interest rates required on loans for acquisition and/or development of oil and natural gas properties shall be calculated by adding two percent (2%) to the prime interest rate charged by banks as published in the Economic Indicators Prepared By The Council Of Economic Advisors For The Joint Economic Committee for the three (3) calendar years immediately prior to the July 1 assessment date. The loan rate shall be compared to quarterly interest rates offered on thirteen (13) week United States Constant Maturity Treasury Yields for the same three (3) calendar years period. The weighted average (sum of years digits) difference between the two, combined with bands-of-investment analysis, shall be used as a basis to estimate the risk rate.

4.1.1.c. Nonliquidity rate. -- The "nonliquidity rate" shall be developed through an annual survey to determine a reasonable estimate of time that oil and natural gas properties, when exposed to the market for sale, remain on the market. The time determined in this manner shall be used to identify United States Constant Maturity Treasury Yields with similar time differentials in excess of thirteen (13) week United States Constant Maturity Treasury Yields. The interest differential between these securities shall be used to represent the nonliquidity rate. For example, if it is determined that oil and natural gas property remains on the market for an average of nine months (39 weeks) before being sold, the nonliquidity rate shall be derived by taking the rate on one (1) year United States Constant Maturity Treasury Yields minus the rate on thirteen (13) week United States Constant Maturity Treasury Yields. The rate used will be a weighted average (sum of years digits) of the data from the three (3) calendar year periods prior to the July 1 assessment date.

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

4.1.1.e. Inflation rate (negative). -- Nominal interest rates, including the "safe rate" mentioned in subdivision 4.1.1a of this subsection, are higher than real rates by an amount representing expectation of future inflation; however, net annual income from oil and natural gas property is to be estimated assuming level future royalties (no inflation). The capitalization rate shall be a real rate, net of expectation of inflation. The inflation rate shall be estimated through analysis of the most recent calendar year's urban consumer price index as determined by the U.S. Department of Labor, Bureau of Labor Statistics. The weighted average (sum of years digits) rate will be used from the data of the three (3) calendar year periods prior to the July 1 assessment date.

4.1.1.f. Recapture component. -- A capitalization rate will be developed for oil and gas by applying a mid-year Inwood table.

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

4.1.3. Property tax component. -- This component shall be estimated by multiplying the assessment rate by the prior tax year's statewide average for Class III property. At the present time, research indicates that royalty rates on oil and natural gas include a component for property tax, with no additional compensation from the producer. As a result, the property tax component shall be used in the capitalization rate; however, if this described general practice changes and property taxes are paid as additional compensation, the use of this component shall be deleted. The rate used will be a weighted average (sum of years digits) of the data from the three (3) tax year periods prior to the July 1 assessment date.

4.1.4. Results of capitalization rate survey -- A review of economic data for development of components referenced in section 4.1 of this section heading shall be conducted annually and the results filed by the Tax Commissioner in the State Register on or before July 1st of each year. Public comment on the published results shall be accepted until August 1st of each year with final results filed in the State Register on or before September 1st of each year.

4.2. Yield capitalization model. -- A yield capitalization model shall be developed for each producing property. The model shall use as a beginning point and include for each producing well, the price per unit of product (both working interest and royalty interest) and production amounts based on the price per MCF of gas produced or barrel of oil or other liquid produced. These amounts will be the weighted average (sum of the years digits) from the most recent consecutive three (3) full production calendar years preceding the July 1 assessment date. Data, such as production, price, and well age, from the calendar year preceding the July 1 assessment date will be considered the basis for the assessed valuation. Price and production amounts shall be proportionately reduced by application of the appropriate production decline rate, referenced in section heading 5 or 6 of this rule, as appropriate, to yield a declining discounted cash flow series typical of the producing area and strata. The discounted cash flow series income shall be apportioned to the working interest and to the royalty interest based upon percentage interests referenced in section 5.4. or 6.4. of this rule. Where the well did not produce during the entire calendar year, the discounted cash flow series and royalties paid will be annualized prior to the process of applying a yield capitalization procedure.

§110-1J-5. Method for valuing oil wells.

5.1. Except as otherwise provided in this rule, the appraised value in money of a developed and producing oil well on assessment dates beginning on and after July 1, 2021, including personal property at the well necessary to recover the oil, shall be determined under section 5.2 or 5.3 of this section heading.

5.2. General rule. -- For wells for which the average daily production of oil is one barrel or more in the calendar year preceding the July 1 assessment date, the appraised value shall be determined as follows. Annually, the Tax Commissioner shall determine, from a regional published index of sales prices per barrel of oil. That number shall be multiplied by the number of barrels of oil produced by each well at the point where oil is delivered in a first measured sales transaction. The product of this computation is then reduced by the average annual industry operating and post-production expenses per barrel of oil determined as provided in this rule for the number of barrels of oil sold. This net amount is then multiplied by the applicable capitalization rate determined under this rule and the applicable decline rate determined under this rule to determine the value of the well for property tax purposes.

5.3. Marginal oil wells. -- For wells for which average daily production of oil is less than one barrel in the calendar year preceding the July 1 assessment date, the appraised value in money equals the average daily production of the well in the calendar year preceding the July 1 assessment date multiplied by sixty percent (60%) of the net present value of one barrel of oil as computed under section 5.2. of this section heading.

5.4. Percentage interest in oil. -- Where the ownership of oil in place is divided through a lease or other arrangement, the compensation to the owner of the oil in place is derived by designating a percentage (generally one-eighth) of the production income to be the royalty payment to the owner. The remainder (generally seven-eighths) is the working interest. The Tax Commissioner shall annually determine working and royalty percentage interests on a per well or lease basis, through a review of oil producer/operator annual property tax returns.

5.5. Average industry operating and post-production expenses. -- The Tax Commissioner shall annually determine the average annual industry operating and post-production expenses for each category and subcategory of well listed in section heading 10 of this rule. The average annual industry operating and post-production expenses shall be deducted from the value of the working interest determined under section 5.2. of this section heading to develop an income stream for application of a yield capitalization procedure.

5.6. Results of average annual industry operating and post-production per barrel costs. -- A review of the data for development of the per barrel cost average industry operating and post production expense referenced in section 5.5 of this section heading shall be conducted annually and the results filed by the Tax Commissioner in the State Register on or before July 1st of each year. The per barrel costs will be stated based on the categories of lease operating expense, gathering, processing and transportation. Public comment on the published results shall be accepted until August 1st of each year with final results filed in the State Register on or before September 1st of each year.

5.7. Average industry production decline rates. -- The Tax Commissioner shall annually derive and report the average industry production decline rates by reviewing oil well production records of various State agencies along with data provided by companies and individuals.

5.8. Yield capitalization model. -- A yield capitalization model shall be developed for each producing property. The model shall use as a beginning point and include for each producing well, the price per barrel of product (both working interest and royalty interest) and production amounts based on the price per barrel of product from the most recent consecutive three (3) full production calendar years preceding the July 1 assessment date. These amounts will be weighted average (sum of years digits). Data, such as production, price, and well age, from the calendar year preceding the July 1 assessment date will be considered the basis for the assessed valuation price per barrel of product and production amounts shall be proportionately reduced by application of the appropriate production decline rate, referenced in section 5.7 of this section heading, to yield a declining discounted cash flow series typical of the producing area and strata. The discounted cash flow series shall be apportioned to the working interest and to the royalty interest based upon percentage interests referenced in section 5.4 of this section heading. Where the well did not produce during the entire calendar year, the price per barrel of product produced and royalties paid will be annualized prior to the process of applying a yield capitalization procedure.

5.8.1. Working interest model. -- The working interest weighted average (sum of years digits) discounted cash flow of the working interest referenced in section 5.8 of this rule shall be reduced by the weighted average annual per barrel operating and post-production expenses referenced in section 5.5 of this rule to yield a net working interest discounted cash flow. The net working interest discounted cash flow shall be discounted by applying, on an annual basis, a mid-year life Inwood factor reflecting the capitalization rate referenced in section heading 4 of this rule. The summation of the annual discounted income streams shall be the market value estimate for the working interest of the producing oil well including personal property as defined by section heading 3 of this rule. The minimum appraised value for any producing well may not be less than the machinery and equipment value discussed in section 7.9 of this rule. This minimum rate does not apply to home-use only wells.

5.8.2. Royalty interest model. -- The royalty interest weighted average (sum of years digits) cash flow of the royalty interest referenced in section 5.8 of this rule shall be discounted by applying, on an annual basis, a mid-year life Inwood factor reflecting the capitalization rate referenced in section heading 4 of this rule. This amount will then be proportionally distributed to each royalty owner based on the royalty percentage received during the most recent calendar year prior to the July 1 assessment date. The summation of the annual discounted income streams shall be the market value estimate for the royalty interest of the producing oil well, for an area of up to forty (40) acres per producing conventional oil well, and the unitized acres per producing horizontal oil well. The excess number of acres shall be valued as reserve oil property.

§110-1J-6. Method for valuing gas wells.

6.1. Except as otherwise provided in this rule, the appraised value in money of a developed and producing gas well on assessment dates beginning on and after July 1, 2021, including personal property at the well site necessary to recover the gas, shall be determined under sections 6.2. and 6.3. of this rule.

6.2. General rule. -- For natural gas wells for which average daily production of gas is eight (8) MCFs or more in the calendar year preceding the July 1 the appraised value shall be determined as follows. Annually, the Tax Commissioner shall determine, from a regional published index of sales prices per MCF, the market price per MCF of gas produced in West Virginia. That number shall be multiplied by the number of MCFs produced by each well at the point where residual gas is measured for delivery. The product of this computation is then reduced by the weighted average annual industry operating and post-production expenses per MCF determined in accordance with this rule for the residual gas sold. This net amount is then multiplied by the applicable capitalization rate determined under this rule and the applicable decline rate determined in accordance with this rule to determine the value of the well for property tax purposes.

6.2.1. When the gas well produces wet gas, the appraised value of natural gas liquids included in the raw gas produced from the well shall be determined as follows. Annually, the Tax Commissioner shall determine, from one or more published regional indexes of sales prices, which the Tax Commissioner may in his or her discretion adjust to determine a market price per barrel of natural gas liquids produced from gas produced in West Virginia. That number shall then be multiplied by the number of barrels of natural gas liquids attributable to each well in West Virginia that produces wet gas, determined at the point where natural gas liquids leave the processing plant. The product of this computation is then reduced by the average industry operating and post-production expenses determined in accordance with this rule allocated to the natural gas liquids produced. This net amount is then multiplied by the applicable capitalization rate determined under this rule to determine the value of the natural gas liquids for property tax purposes. This value shall then be apportioned to a well that produces wet gas based upon the ratio that MCFs of wet gas produced by well bears to the total number of MCFs processed to produce the natural gas liquids. The value so apportioned shall then be added to the value of the well determined under section 6.2. of this rule.

6.3. Marginal gas wells. – For wells for which average daily production of gas is less than eight (8) MCFs in the calendar year preceding the July 1 assessment date, the true value in money equals the average daily production of the well in the calendar year preceding the tax lien date multiplied by fifty percent of the net present value of one (1) MCF as computed under section 6.2 of this rule.

6.4. Percentage interest in gas. -- Where the ownership of gas in place is divided through a lease or other arrangement, the compensation to the owner of the property is derived by designating a percentage (generally one-eighth) of the production income to be the royalty payment to the owner. The remainder (generally seven-eighths) is the working interest. The Tax Commissioner shall annually determine working and royalty percentage interests on a per well or lease basis, through a review of gas producer/operator annual property tax returns.

6.5. Average annual industry operating and post-production expenses. -- The Tax Commissioner shall annually determine the average annual industry operating and post-production expenses per category and subcategory of well listed in section heading 10 of this rule. The average annual industry operating and post-production expenses shall be deducted from the value of the working interest determined under section 6.2. of this rule to develop an income stream for application of a yield capitalization procedure.

6.5.1 Results of average annual industry operating and post-production costs. -- The Tax Commissioner shall annually review operating and post-production expenses provided by producers in the annual survey permitted in section heading 10 of this rule and in the returns filed by producers pursuant to section heading 9 of this rule. The results of this review shall be summarized for each of the categories and subcategories of wells listed in section heading 10 of this rule and the summary shall then be published in the variables required to be filed in the State Register as provided in section heading 11 of this rule.

6.6. Average industry production decline rates. -- The Tax Commissioner shall annually derive and report the average industry production decline rates by reviewing gas well production records of various State agencies along with data provided by companies and individuals.

6.7. Yield capitalization model. -- A yield capitalization model shall be developed for each producing property. The model shall use as a beginning point and include for each producing well, the price per MCF of gas (both working interest and royalty interest) and production amounts based on the price per MCF for the most recent calendar year of full production preceding the July 1 assessment date. These amounts will be weighted average (sum of years digits) and then adjusted for production decline to reflect the income available to the property owner beginning with the July 1st assessment date to June 30th preceding the next July 1 assessment date. Data, such as MCF production, price, and well age, from the calendar year preceding the July 1 assessment date will be considered the basis for the assessed valuation. Price per MCF of gas produced and production amounts shall be proportionately reduced by application of the appropriate production decline rate, referenced in section 6.6 of this rule, to yield a declining discounted cash flow series typical of the producing area and strata. The discounted cash flow series shall be apportioned to the working interest and to the royalty interest based upon percentage interests referenced in section 6.4 of this rule. Where the well did not produce during the entire calendar year, the price per MCF of gas produced and royalties paid will be annualized prior to the process of applying a yield capitalization procedure.

6.7.1. Working interest model. -- The working interest weighted average (sum of years digits) discounted cash flow of the working interest referenced in section 6.7 of this rule shall be reduced by the annual operating and post-production expenses referenced in section 6.5 of this rule to yield a net working interest discounted cash flow. The net working interest discounted cash flow shall be discounted by applying, on an annual basis, a mid-year life Inwood factor reflecting the capitalization rate referenced in section heading 4 of this rule. The summation of the annual discounted income streams shall be the market value estimate for the working interest of the producing natural gas well including personal property as defined in section heading 3 of this rule. The minimum appraised value for any producing well may not be less than the machinery and equipment value discussed in section 7.9 of this rule. This minimum value does not apply to home-use only wells.

6.7.2. Royalty interest model. -- The royalty interest weighted average (sum of years digits) cash flow of the royalty interest referenced in section 6.7 of this rule shall be discounted by applying, on an annual basis, a mid-year life Inwood factor reflecting the capitalization rate referenced in section heading 4 of this rule. This amount will then be proportionally distributed to each royalty owner based on the royalty percentage received during the most recent calendar year prior to the July 1 assessment date. The summation of the annual discounted cash flow shall be the market value estimate for the royalty interest of the producing natural gas well for an area of up to one hundred twenty-five (125) acres per producing conventional natural gas well, and up to the number of acres per producing horizontal natural gas well determined annually by the Tax Commissioner and specified in the list of natural resource variables published annually in the State Register on or before July 1 each year. The excess number of acres shall be valued as reserve gas property.

§110-1J-7. Valuation of other oil and gas properties.

7.1. Valuation of home-use gas wells. -- The appraised value of a gas well, when the gas produced by the well is used for home-use only by the owner of the well, or by the owner of the gas in place, will be an annual appraised value determined from information published by the U.S. Department of Energy, Energy Information Administration. If the home-use well owner has ownership in the gas in place, the assessed value of the well will be added to the owner's real property assessment. However, if the home-use well owner only has rights in the surface, the assessed value will be added to the personal property assessment of the homeowner. This value of home use gas wells will be included in the tentative natural resource variables published in the State Register on or before July 1 each year. If the well also produces oil, that portion of the well will be separately valued.

7.2. Valuation of industrial-use gas wells. -- The appraised value of a gas well, when the gas produced by the well is used for industrial purposes only, will be based on the actual most recent calendar year preceding the July 1 appraisal date MCF usage times the average West Virginia spot price for that calendar year determined by the "Natural Gas Monthly," published by the U.S. Department of Energy, Energy Information Administration.

7.3. Valuation of farm-use gas wells. -- The appraised value of a gas well, when the gas produced by the well is used only for farm purposes, such as heating the barn and farmhouse, will be an annual appraised value determined from information published by the U.S. Department of Energy, Energy Information Administration. If the farm-use well owner has ownership in the mineral rights, the assessed value will be added to the real property assessment. However, if the farm-use well owner only has rights in the surface, the assessed value will be added to the personal property assessment. This value shall be included in the tentative natural resource variables published in the State Register on or before July 1 each year. If the well also produces oil, that portion of the well will be separately valued.

7.4. Valuation of non-producing acreage. The appraised value per acre of non-producing acreage, which includes the acreage on which there is a shut-in well, shall equal the discounted annual lease payment per acre. A valuation schedule for non-producing properties shall be determined annually by the Tax Commissioner for each district within a county, where data is available. The Tax Commissioner shall annually conduct a review of oil and/or natural gas lease agreements, or lease agreements addressing both, transacted at arms-length in all fifty-five (55) counties to determine the average annual delay rental lease payment per acre, and lease term. The per-acre value for non-producing property shall be the sum of the projected annual income stream from delay rental during the lease term discounted in each year by a capitalization rate plus bonus payments. A valuation of one dollar ($1.00) per acre shall be used where property is located in those areas of the State where drilling activity or production have not been established and the property is presumed to be barren.

7.5. Valuation of plugged well property acreage. -- The appraised value of plugged well property acreage shall be valued to the owner of the oil or gas in place at the nominal rate of one dollar ($1.00) per acre. This category includes any plugged well property acreage of up to one hundred twenty-five (125) acres per conventional natural gas well, and the unitized acres per horizontal gas well. In the case of a plugged oil well, this section 7.5 shall apply to up to forty (40) acres per conventional oil well and the unitized acreage per horizontal oil well. Any additional acreage will be valued as reserve acreage.

7.6. Valuation of abandoned well property acreage. -- The appraised value of abandoned well acreage shall revert to the value of reserve oil and gas acreage in the county provided there are no other producing or plugged well on the property.

7.7. Valuation of barren oil and natural gas areas. -- The appraised value of oil and/or gas interests in barren oil and natural gas property, as defined in section heading 3 of this rule, shall be one dollar ($1.00) per deed acre. When two or more persons own the acreage, this appraised value shall be allocated among the owners based upon the percentage of their ownership of the acreage.

7.8. Valuation of wells that produce both oil and natural gas. -- The appraised value of wells that produce both oil and natural gas shall be determined by use of the methods described in section heading 5 and 6 of this rule. These values shall then be summed to result in the overall value of the oil and/or natural gas producing acreage or acreage producing both oil and natural gas.

7.9. Valuation of storage well areas. -- The appraised value of storage well areas shall equal the discounted annual lease payment per acre that is applied to the reserve oil and gas acreage within the county. The minimum appraised value applied to the areas will not be less than five dollars ($5.00) per deed acre. The appraised value shall not include the value of inventories stored within. Natural gas storage inventories shall be assessed to the inventory owner.

7.10. Valuation of the producer's personal property at non-producing or shut-in wells. -- The appraised value of the producer's personal property that is part of a non-producing or shut-in well's appraisal will be assigned to the producer at the same appraised value applied to machinery and equipment at home-use wells.

7.11. Valuation of pre-production/permit leaseholds. -- Chattel real accounts (personal property) for pre-production/permit leaseholds will be valued by the county assessor.

7.12. Valuation of producing flat-rate royalty accounts. -- The appraised value of a producing flat-rate royalty will be valued using a discounted cash flow series of the flat rate. It will not include production decline rates.

7.13. Farm properties. -- The oil and gas rights, that are part of a "fee" estate where the use of the surface has qualified for farm use appraisal, shall be valued as described in the Tax Commission's rule, Valuation of Farmland and Structures Situated Thereon For Ad Valorem Property Tax Purposes, 110 C.S.R. 1A. For purposes of this section, "farm fee estate" means absolute ownership of the farmland unencumbered by any other interest or estate.

7.14. Appraised value of other tangible personal property. -- The appraised value of tangible personal property, as defined in section heading 3 of this rule, not used in the production of gas or oil, or both gas and oil, permanently located in and about the well shall be valued by the county assessor, the West Virginia Tax Department, or the Board of Public Works when the property is owned by a public service business as defined in W. Va. Code §11-6-1.

§110-1J-8. Default method of valuation.

8.1. When the producer does not file a complete return for a well on or before the August 1st due date of the return, as required by §11-6K-1 of the West Virginia Code, and section heading 9 of this rule, the Tax Commissioner shall use the average of the last 12 months price based on section headings 5 and 6 of this rule times the amount of production from the well reported to the West Virginia Department of Environmental Protection to estimate the value of the well as provided in section heading 5 or 6 of this rule.

8.2. When the producer does not report the production of a well to the West Virginia Department of Environmental Protection the Tax Commissioner shall estimate the appraised value of the well from information available to the Tax Commissioner.

§110-1J-9. Annual property returns.

9.1. On or before August 1st of each year, as required by §11-6K-1 of this Code, the producer shall file the West Virginia Oil and Gas Producer/Operator Return with the State Tax Commission, with acknowledgement to the county assessors in the counties where the oil and natural gas property is located. This Return form shall be designed by the State Tax Commissioner so that information pertinent to the valuation of the producing property, and the plugged and abandoned well property shall be reported properly by the producer of oil or gas or both.

9.2. When a producer or operator files annual property tax returns for twenty-five (25) or more wells, the returns and other documents required by this rule shall be filed electronically. A producer or operator that files less than twenty-five (25) annual property tax returns may file the returns electronically.

9.3. Format requirements for electronic filing. -- The requirements and formats for electronic filing are listed in instructions for electronic filing of the form. These formats are available on the State Tax Department's webpage https://tax.wv.gov/Business/PropertyTax/Pages/PropertyTax.aspx .

§110-1J-10. Annual surveys.

10.1. Average annual industry operating and post-production expenses. -- The Tax Commissioner shall annually, determine the average annual industry operating and post-production expenses for each category and subcategory of well listed in this section. The average annual industry operating and post-production expenses for the category or subcategory of well shall be deducted from the value determined under section 5.2 or 6.2 of this rule for the well to develop an income stream for application of a yield capitalization procedure. For this purpose, wells shall be categorized as:

10.1.1. Vertical wells producing dry natural gas;

10.1.2. Vertical wells producing wet gas;

10.1.3. Vertical wells producing oil;

10.1.4. Vertical wells producing dry natural gas and oil;

10.1.5. Vertical wells producing wet natural gas and oil;

10.1.6. Horizontal wells producing dry gas with the following laterals:

10.1.6.a. 3,000 feet or less;

10.1.6.b. more than 3,000 feet but not more than 10,000 feet; and

10.1.6.c. more than 10,000 feet.

10.1.7. Horizontal wells producing wet gas with the following laterals:

10.1.7.a. 3,000 feet or less;

10.1.7.b. more than 3,000 feet but not more than 10,000 feet; and

10.1.7.c. more than 10,000 feet.

10.1.8. Horizontal wells producing both dry gas and oil with the following laterals:

10.1.8.a. 3,000 feet or less;

10.1.8.b. more than 3,000 feet but not more than 10,000 feet; and

10.1.8.c. more than 10,000 feet.

10.1.9. Horizontal wells producing both wet gas and oil with the following laterals:

10.1.9.a. 3,000 feet or less;

10.1.9.b. more than 3,000 feet but not more than 10,000 feet; and

10.1.9.c. more than 10,000 feet.

10.1.10. Vertical or horizontal wells producing coalbed methane gas.

10.2. In lieu of the annual survey permitted in section 10.1 of this section heading or elsewhere in this rule, the Tax Commissioner may, in his or her discretion, require additional expense information to be included in the return filed pursuant to section heading 8 of this rule. The Tax Commissioner shall use the additional information reported to develop the variables this rule requires.

§110-1J-11. Annual reports of variables.

11.1 The Tax Commissioner shall on or before July 1st of each year publish and file in the State Register an annual summary of the variables to be considered in arriving at the value of the specific oil and/or natural gas related property. Public comments shall be accepted until August 1st of each year with the final results filed in the State Register on or before September 1st of each year.

11.2 The published variables shall include, but not be limited to, information about the components of the capitalization rates, the sales prices of the various natural resource products, the method used to determine the various weighted averages, and the annual average industry operation and post-production operating expenses for each category and subcategory of well listed in section 10 of this rule.

§110-1J-12. Confidentiality.

12.1. All information provided by or on behalf of a natural resources property owner or by or on behalf of an owner of an interest in natural resources property to any state or county representative for use in the valuation or assessment of natural resources property or for use in the development or maintenance of a legislatively funded mineral mapping or geologic information system is confidential under W. Va. Code §11-1A-23 and §11-1C-14. The information provided is exempt from disclosure under the provisions of West Virginia Code §29B-1-4, and shall be kept, held, and maintained confidential except to the extent the information is needed by the Tax Commissioner to defend an appraisal challenged by the owner or lessee of the natural resources property subject to the appraisal: *Provided*, that this section may not be construed to prohibit publication or release of information generated as part of the minerals mapping or geologic information system, whether in the form of aggregated statistics, maps, articles, reports, professional talks, or otherwise presented in accordance with generally accepted practices and in a manner so as to preclude the identification or determination of information about particular property owners.

12.2. Confidentiality of average industry operating and postproduction expenses survey information.

12.2.1. Financial information and other data of oil and natural gas producers disclosed to the Tax Commissioner pursuant to the average annual industry operating and postproduction expenses survey required under this Rule shall be considered confidential and exempt from disclosure under the provisions of W. Va. Code §29B-1-1 et seq.

12.2.2. Any information disclosed to the Tax Commissioner pursuant to this Rule shall have the confidentiality protections given to the property tax return under W. Va. Code §11-1A-23 and §11-1C-14. Any unauthorized disclosure of such information not authorized by these sections shall be subject to the penalties provided for unlawful disclosure in those sections.