

WEST VIRGINIA OFFICE OF



TAX APPEALS

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CHIEF ADMINISTRATIVE LAW JUDGE

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ANNUAL REPORT TO THE LEGISLATURE FOR FISCAL YEAR 2018

The West Virginia Office of Tax Appeals ("OTA") was created by the Legislature under the provisions of West Virginia Code § 11-10A-1, *et seq.*, to provide taxpayers the opportunity for unbiased review of certain decisions of the Tax Commissioner. During Fiscal Year 2018, the Office of Tax Appeals operated with a small staff consisting of one chief administrative law judge ("CALJ") who is appointed by the Governor, one (1) administrative law judge ("ALJ"), one (1) executive director, and three (3) support personnel. CALJ Heather Harlan resigned her position on November 8, 2017. On December 20, 2017, A.M. "Fenway" Pollack was appointed by the Governor to serve out the balance of Judge Harlan's term. In addition, during the fiscal year one secretary resigned, leaving the agency down one support staff person for approximately six months. This did create heavy workloads for the other two secretaries, but temp personnel were brought in to assist for a short period of time.

In the preceding fiscal year, three hundred forty-six (346) regular petitions and sixty-five (65) small claims petitions were filed, in accordance with the statutory requirements and the administrative rules for this OTA, for a total of four hundred eleven (411) matters docketed. Three hundred ninety-five (395) final dispositions occurred during the current fiscal year. Administrative law judges issued eleven (11) Final Decisions on regular matters, three hundred fifty-six (356) Dismissal Orders and twenty-eight (28) Show Cause Orders. In addition, there were five (5) petitions that were not docketed due to lack of jurisdiction, which drew Dismissal Orders based on untimeliness.

This year's petition receipts represent an almost identical amount from the previous fiscal year with a variation of only two (2) less.

The first action in all new cases is a telephonic status conference. The purpose of this status conference is to answer any questions that petitioners may have and to begin a dialogue between the Tax Commissioner's counsel and the Petitioner to ascertain if the matter can be resolved, as contemplated by the governing law, without the need for an evidentiary hearing.

In the vast majority of cases, OTA conducts follow-up telephonic conferences to assist the parties in moving cases forward. Of the four hundred eleven (411) petitions docketed for fiscal year 2018, the following taxes were most often the subject of appeal:

Personal Income Tax	255
Combined Sales & Service & Use Tax	56
Corporate Net Income Tax/Business Franchise Tax	25
Withholding Tax	13
Pass Thru Entity Tax	14
Fuel – Alternative/Motor/Excise Taxes	25
Successor in Business	3
Severance Tax	7
Other Taxes	13

Total by Type of Tax: 411

In Fiscal Year 2018, two administrative law judges of the Office of Tax Appeals conducted seven hundred forty-seven (747) proceedings, as follows:

Prehearing Conferences – in person	19
Prehearing Conferences – telephonic	26
Telephonic Status Conferences	688
Miscellaneous Motions Hearings	1
Evidentiary Hearings	13
Show Cause Evidentiary Hearings	0
Oral Arguments	0

The Office of Tax Appeals conducts most proceedings at its place of business in Charleston, West Virginia. However, at the time a taxpayer files a petition for appeal, he or she may request to be heard at one of several other locations throughout the state. Dockets are set at other locations when there are enough cases to justify travel by an administrative law judge. Petitioners are told that there may be a wait before a docket is conducted in an area, so that petitioners may opt to travel to Charleston for quicker resolution. In fiscal year 2018, there were no evidentiary mobile docket hearings held. Telephonic pre-hearings were held in June 2018 as a prerequisite to mobile hearings to be held in early FY 2019.

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As of the closing of the fiscal year on June 30, 2018, there were three hundred eighty-one (381) proceedings pending before this Tribunal. Included in this total, were one hundred eighteen (118) cases held in abeyance due to awaiting the outcome of several controversial issues still pending decision at the State Circuit and Supreme Courts. One tax issue is still pending at the U.S Supreme Court.

Should you have any questions or concerns, please do not hesitate to call me at the number shown above. Thank you for your time and consideration.

Respectfully submitted,



A.M. "Fenway" Pollack
Chief Administrative Law Judge
West Virginia Office of Tax Appeals

Date

2/15/19

SPL/AMP