

**ANNUAL ACTIVITY REPORT
TO THE LEGISLATURE**

**BY THE CHIEF ADMINISTRATIVE LAW JUDGE FOR THE
WEST VIRGINIA OFFICE OF TAX APPEALS (“OTA”)**

PURSUANT TO W. VA. CODE § 11-10A-7(b)(6) [2005]

**FOR THE SECOND FULL FISCAL YEAR OF OPERATIONS --
FROM JULY 01, 2004 THROUGH JUNE 30, 2005**

Pg. 1 of 6 Pgs.

(1) “Number and Type[s] of Matters Handled” during this fiscal year:

(a) Petitions Filed (actually Docketed) (by docket numbers):

Small Claim Petitions	198
Regular (non- Small Claim) Petitions	396

Total PETITIONS FILED (DOCKETED): 594

(b) Types of Tax or Other Matter (in order, most to least):

Personal Income Tax	182
Consumers’ Sales and Service Tax (excluding Officer Liability)	132
Corporate (Charter) License Tax	64
Use tax (Purchasers’ and Retailers’)	61
Withholding Tax (excluding Officer Liability)	29
Corporate Net Income/Business Franchise -- Combined tax return	21
Corporate Net Income Tax (clearly separate from bus. franch. tax)	19
Motor Fuel Excise Tax	13
Special Tax on Coal Production -- \$0.02/ton -- Code § 22-3-32	12

**ANNUAL ACTIVITY REPORT OF OTA
FOR SECOND FULL FISCAL YEAR
JULY 01, 2004 THROUGH JUNE 30, 2005**

Pg. 2 of 6 Pgs.

Severance (and “Business Privilege”) Tax -- Code § 11-13A-1 <i>et seq.</i>	11
Officer Liability -- Consumers’ Sales and Service Tax	11
Health Care Provider (so-called “Broad-based”) Tax -- Code § 11-27-1 <i>et seq.</i>	7
Officer Liability -- Withholding Tax	7
Various State Taxes (Soft Drink; Solid Waste; Telecommunications; Tobacco Excise; etc.)	7
Business Franchise Tax (clearly separate from corp. net. inc. tax)	3
International Fuel Tax Agreement (IFTA)	3
Gasoline & Special Fuel Sales Tax	3
Estate Tax	3
Business Registration Tax	3
Bingo & Charitable Raffle -- License or Monetary Penalty matters	2
Gasoline & Special Fuel Use Tax	1
Special Reclamation Tax on Surface-Mined Clean Coal -- \$0.03/ton, etc. -- Code § 22-3-11(h), etc.	0
All Other Taxes & Matters	0

Total PETITIONS FILED (DOCKETED): 594

(2) Number of Matters “Pending” (“Open”) at End of Second Full Fiscal Year (on June 30, 2005):

Matters Pending HEARING (not yet fully submitted for decision) –

Bluefield mobile docket	0
Bridgeport mobile docket	5
Martinsburg mobile docket	8
Wheeling mobile docket	27
Main, Charleston docket	69

Total Matters Pending HEARING: 109 [See Note (1)]

**ANNUAL ACTIVITY REPORT OF OTA
FOR SECOND FULL FISCAL YEAR
JULY 01, 2004 THROUGH JUNE 30, 2005**

Total Matters Pending DECISION (fully submitted for decision): 25

Total Matters PENDING ("OPEN") as of 06/30/05: 134

Important Statistics not required to be stated by W. Va. Code § 11-10A-7(b)(6) [2005] (for the second full fiscal year ended June 30, 2005):

Proceedings Held by OTA:

(1) Prehearing Conferences Held --	76
(2) Status Conferences Held (OTA started keeping separate statistics on these as of Jan., '05) --	22
(3) Hearings on Miscellaneous Motions (OTA started keeping separate statistics on these as of July, '04) --	5
(4) Evidentiary Hearings Held --	136
<u>Total PROCEEDINGS HELD</u> by OTA:	239

Dispositions by OTA:

(1) Orders Entered Refusing to Docket Petitions which were <u>clearly</u> tendered UNTIMELY for lawful Filing --	8
(2) Letters Refusing to Docket Significantly DEFICIENT Petitions (OTA started keeping separate statistics on these as of Jan., '05) --	12

**ANNUAL ACTIVITY REPORT OF OTA
FOR SECOND FULL FISCAL YEAR
JULY 01, 2004 THROUGH JUNE 30, 2005**

(3) Final ORDERS Entered
(OTA started keeping separate statistics on these as of July, '04) -- 47

(4) Final DECISIONS Issued -- with Discussions & Synopsis point(s)
(non- small claim & small claim cases; some matters are submitted for
decision on documents only, without an evidentiary hearing in person) -- 176 [See Note
(2)]

(5) Cases Resolved Informally by OTA (with**OUT** formal
Docketing, Hearings, or formal Decisions or Orders) -- 233 [See
Note (3)]

Total DISPOSITIONS by OTA: 476

Notes:

(1) Under the requirements of the organic statute, W. Va. Code §§ 11-10A-1 [2002] *et seq.* and the procedural rules, 121 C.S.R 1 (effective April 20, 2003), it takes about 180 days (6 months) for a typical, regular (non- small claim) matter to be heard: (1) the evidentiary hearing is set initially for a date that is about 90 days after the petition is filed (to allow for the Tax Commissioner to file an answer, the parties to hold their first conference, etc.); and (2) a first request for a “continuance,” that is, a postponement, of the hearing (based upon an on-going attempt by the parties to resolve the matter without a hearing, or based upon scheduling conflicts, etc.) is usually granted for a period of up to 90 days past the initially set hearing date.

OTA usually conducts hearings at certain regional sites in the State once a year.

**ANNUAL ACTIVITY REPORT OF OTA
FOR SECOND FULL FISCAL YEAR
JULY 01, 2004 THROUGH JUNE 30, 2005**

(2) ALL regular (non- small claim) matters were decided (by the three full-time administrative law judges on staff) in time frames that were well within the statutory period of six (6) months after the matter was fully submitted (that is, after the receipt of all evidence and post-hearing memoranda of law).

ALL small claim matters were decided well within the self-imposed 90-day period, after full submission of the matter, set forth in the procedural rules for small claim matters.

In other words: as of 06/30/05 (or on any other date, for that matter), there literally were no (zero) “late” decisions at all: **VERY EFFICIENT INDEED!**

(3) These 233 matters were resolved by OTA very informally, that is, by contacting the parties by telephone or letter and persuading the parties to resolve matters that clearly did not need to be administratively litigated (on what proved to be the undisputed facts and law) or which, under a cost/benefit analysis, should not be administratively litigated.

With respect to this last category of matters, OTA cannot stress enough that the Legislature should fully fund (as soon as possible), and the Tax Commissioner should promptly hire the necessary staff for, the PRE-assessment procedure, including conciliation staff within the State Tax Commissioner’s budget, as set forth in the existing, approved legislative rules required by the Legislature as part of the same legislation creating OTA. Taxpayers and the State would save significant administrative litigation costs overall, and the “cash flow” for State revenues would be significantly enhanced, by fully funding and utilizing the legislatively required pre-assessment procedure, including conciliation staff. In addition, of course, OTA would have more time to devote its attention to those truly contested, quasi-judicial matters that the Legislature intended all along for OTA, as an independent, court-like agency, to handle, that is, matters truly needing administrative litigation. Without such full funding and staffing, OTA, as under the prior system, will remain, frankly, a “dumping place” for many “tempests in a teacup” which the Legislature has already decided should be resolved by the less formal, less expensive, and quicker, pre-assessment/conciliation procedure before the State Tax

**ANNUAL ACTIVITY REPORT OF OTA
FOR SECOND FULL FISCAL YEAR
JULY 01, 2004 THROUGH JUNE 30, 2005**

[Notes Concluded:]

Commissioner (there, taxpayers could represent themselves or could be represented by, for example, certified public accountants, as envisioned by the Legislature).

Respectfully submitted,

Honorable R. Michael Reed
Chief Administrative Law Judge
West Virginia Office of Tax Appeals

Date

RMR:jt

