

WEST VIRGINIA OFFICE OF



TAX APPEALS

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ANNUAL REPORT TO THE LEGISLATURE FOR FISCAL YEAR 2009

The West Virginia Office of Tax Appeals 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 disputes related to decisions made by the State Tax Commissioner's Office. The Office of Tax Appeals operates with a small staff consisting of one executive director, five support staff personnel, and three administrative law judges.

In the preceding fiscal year, 266 regular and 114 small claims petitions were filed in accordance with the statutory requirements and the rules of procedure for this office, for a total of 380 matters docketed.

One-hundred and six dispositions occurred during the fiscal year. Administrative law judges entered 37 final decisions on regular matters and 69 final orders on small claims matters. Two-hundred and seventy-four regular and 92 small claims cases were resolved by the parties and formally removed from the docket.

The Office of Tax Appeals evaluated its policies in early calendar year 2009. One notable resulting change is the new procedure under which a status conference is conducted by telephone prior to the hearing in small claims cases. In the past, small claims matters have gone directly to an informal hearing with no prior contact among the parties. So many small claims cases are filed by taxpayers appearing *pro se*, and the status conference gives an administrative law judge the opportunity to make sure each petitioner understands the hearing process, and understands what kind of evidence the petitioner might present relative to his case. While the numeric increase might not be apparent until our next annual report, we believe we already have seen very positive results from this new procedure.

Of the 380 petitions docketed during the fiscal year, the following taxes were most often the subject of appeal:

Personal Income Tax	165
Consumers Sales and Service Tax	51
Withholding Tax	39
Motor Fuel Excise Tax	27
Use Tax	26
Business Registration Tax	17
Corporate Net Income/Business Franchise – (Combined Return)	16
Consumers Sales & Use	14
Business Franchise Tax	9
International Fuel Tax Agreement	5
Corporate Net Income Tax	2
Healthcare Provider Tax	2
Tobacco Products Excise Tax	2
Gasoline & Special Fuel Sales Tax	1
Severance Tax	1
Severance Health Care Provider	1
Cigarette and Tobacco Products Tax	1
Tobacco Settlement Enforcement Monetary Penalty [16-19D]	1
Certain Healthcare Services Business Privilege Tax	0
Corporate License Tax	0
Economic Opportunity Tax Credit	0
Gasoline & Special Fuel Excise Tax	0
Soft Drink Tax	0
Solid Waste Tax	0
Special Tax on Coal Production	0

In Fiscal Year 2009, the three administrative law judges of the Office of Tax Appeals conducted 89 proceedings, as follows:

Prehearing Conferences	36
Status Conferences	22
Miscellaneous Motions Hearings	0
Evidentiary Hearings	15
Show Cause Evidentiary Hearings	11
Telephonic Conferences Conducted	13
Oral Arguments Conducted	1

The Office of Tax Appeals conducts most proceedings at its office in Charleston. However, at the time a taxpayer files a petition for appeal, he or she may elect to be heard at one of several other locations through 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 2009, hearings were conducted in the following cities.

Bluefield	0
Bridgeport	11
Martinsburg	5
Wheeling	6

We chose to add a Bluefield docket in calendar year 2009 because several petitions were received from that area. Before the docket was scheduled, however, all of the cases set for hearing at that location were resolved by the parties.

All regular matters were decided well within the statutorily-required time frame of (6) months after the matter was fully submitted

All small claim matters were decided well within the internally-imposed 90-day period as set forth in the procedural rules for small claim matters.

Respectfully submitted,


Michele Duncan Bishop
Chief Administrative Law Judge
West Virginia Office of Tax Appeals

February 12, 2010
Date

MDB:pb