

WEST VIRGINIA OFFICE OF



TAX APPEALS

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ANNUAL REPORT TO THE LEGISLATURE FOR FISCAL YEAR 2015

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 2015, the Office of Tax Appeals operated with a small staff consisting of one chief administrative law judge who is appointed by the Governor, one (1) administrative law judge, one (1) executive director, and three (3) support personnel. Between fiscal years 2012 and 2014, to reduce budget expenditures and streamline operations, the OTA permanently removed three (3) positions, reducing our staff from nine (9) to six (6) personnel.

In the preceding fiscal year, three hundred seventy nine (379) regular petitions and forty one (41) small claims petitions were filed, in accordance with the statutory requirements and the administrative rules for this OTA, for a total of four hundred twenty (420) matters docketed. Three hundred and eight (308) final dispositions occurred during the current fiscal year. Administrative law judges issued thirty-three (33) Final Decisions on regular matters, two hundred fifty-two (252) Dismissal Orders and twenty-six (26) Show Cause Orders.

On January 31, 2015, the former Chief Administrative Law Judge (CALJ), A.M. "Fenway" Pollack, resigned his position from OTA. During the interim period where a search was conducted by the Board of Governors to locate a new CALJ, decisions and hearings in general were suspended due to statutory concerns and specific issues that require the approval of the CALJ. Most telephonic conferences were conducted during that interim period by the administrative law judge on staff; however, incoming petitions were held in abeyance until the appointment of the new CALJ. Heather G. Harlan was appointed to the position for CALJ on April 16, 2015, and she began work on April 30, 2015.

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. During fiscal year 2015, petition receipts were down by twenty percent (20%); however, fiscal year 2014 yielded an unusually high number of petitions, primarily due to legislation involving credits which ultimately resulted in a large number of petitions for refund filed with OTA during the previous fiscal year. These particular petitions for refund are being actively worked on the OTA docket. Of the four hundred twenty (420) petitions docketed fiscal year 2015, the following taxes were most often the subject of appeal:

Personal Income Tax	128
Combined Sales & Service & Use Tax	99
Corporate Net Income Tax/Business Franchise Tax	24
Withholding Tax	23
Pass Thru Entity Tax	20
Fuel – Alternative/Motor/Excise Taxes	111
Successor in Business	2
Severance Tax	3
Other Taxes	10

Total By Type of Tax: 420

In Fiscal Year 2015, the two administrative law judges of the Office of Tax Appeals conducted five hundred seventy six (576) proceedings, as follows:

Prehearing Conferences	28
Telephonic Status Conferences	530
Miscellaneous Motions Hearings	1
* Evidentiary Hearings	17
Show Cause Evidentiary Hearings	0
Oral Arguments	0

* While page one references thirty-three (33) final decisions having been issued, only seventeen (17) of those required an evidentiary hearing. The other sixteen (16) final decisions that were issued came about by a variety of means, including the parties stipulating to relevant facts and/or filing legal briefs.


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 2015, five (5) mobile hearings were held in Martinsburg, West Virginia only. All cases scheduled in the cities of Bluefield, Bridgeport and Wheeling were resolved without hearings.

February 12, 2016

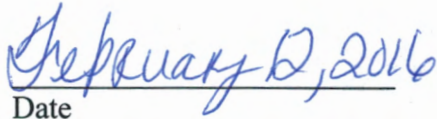
With one exception, all non-small claim and small claim matters were decided within the statutorily required time frame of six (6) months after the matter was fully submitted. The sole exception was a decision issued days beyond the time frame because the Chief ALJ position was vacant for nearly three (3) months. To elaborate, no decisions can be issued in the absence of a CALJ, as the CALJ is the chief executive officer of OTA and statutorily must review and approve all decisions. As of the closing of the fiscal year on June 30, 2015, there were one hundred sixty five (165) proceedings pending before this Tribunal.

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,



Heather G. Harlan
Chief Administrative Law Judge
West Virginia Office of Tax Appeals



Date

HGH/spl