

# WEST VIRGINIA OFFICE OF



## TAX APPEALS

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### ANNUAL REPORT TO THE LEGISLATURE FOR FISCAL YEAR 2020

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 2020, the Office of Tax Appeals operated with a small staff consisting of one (1) chief administrative law judge ("CALJ") who is appointed by the Governor, one (1) administrative law judge ("ALJ"), one (1) executive director ("E.D."), and three (3) support personnel.

In the preceding fiscal year, four hundred forty-eight (448) regular petitions and one hundred sixty-eight (168) small claims petitions were filed, in accordance with the statutory requirements and the administrative rules for this OTA, for a total of six hundred sixteen (616) matters docketed. Seven hundred sixty-one (761) final dispositions occurred during the current fiscal year. Administrative law judges issued fifty-one (51) Final Decisions on regular matters, six hundred eighty-seven (687) Dismissal Orders and twenty-three (23) Show Cause Orders. Petitions that were ruled and dismissed as "not-timely" totaled eighteen (18).

This year's petition receipts represent a slight increase over the prior fiscal year of five hundred ninety-eight (598). Other general statistics listed above show similar levels of increase.

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. From late February 2020 through the end of June 2020, we have been faced with COVID-19 issues which have impacted the agency. All pre-hearings and evidentiary hearings were postponed and only resumed via Microsoft Teams in FY 2021.

In the majority of cases, OTA conducts follow-up telephonic conferences to assist the parties in moving cases forward. Of the six hundred sixteen (616) petitions docketed for fiscal year 2020, the following taxes were most often the subject of appeal:

Personal Income Tax	418
Combined Sales & Service & Use Tax	59
Corporate Net Income Tax/Business Franchise Tax	11
Withholding Tax	15
Pass Thru Entity Tax	15
Fuel – Alternative/Motor/Excise Taxes	18
Successor in Business	2
Severance Tax	11
Other Taxes	67

Total by Type of Tax: 616

In Fiscal Year 2019, two administrative law judges of the Office of Tax Appeals conducted eight hundred twenty-eight (828) proceedings, as follows:

Prehearing Conferences – in person	4
Prehearing Conferences – telephonic	7
Telephonic Status Conferences	809
Miscellaneous Motions Hearings	0
Evidentiary Hearings	6
Show Cause Evidentiary Hearings	0
Oral Arguments	2

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 2020, there were no proceedings conducted in remote cities within the state. This is mostly due to the fact that a host of cases were heard and resolved in 3 locations in the Spring of 2019 and were reported on the FY 2019 report. Due to COVID-19, travel of any kind is currently not an option and any hearings for FY 2021 will likely be conducted via Microsoft Teams. There are thirty-nine (39) cases pending on mobile dockets as of the date of this report.

As of February 1, 2021, there were two hundred eight (208) 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,



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

2/10/21  
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Date

SPL/AMP