

# WEST VIRGINIA OFFICE OF



## TAX APPEALS

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### ANNUAL REPORT TO THE LEGISLATURE FOR FISCAL YEAR 2016

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 2016, 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 (“ALJ”), 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. Further, during the last six (6) months of Fiscal Year 2016, the agency operated with a lone Judge, namely Chief ALJ Heather G. Harlan. ALJ George Piper retired on December 31, 2015. The agency then actively recruited for a suitable replacement during this vacancy, later hiring Crystal S. Flanigan on October 17, 2016.

In the preceding fiscal year, five hundred nine (509) regular petitions and one hundred six (106) small claims petitions were filed, in accordance with the statutory requirements and the administrative rules for this OTA, for a total of six hundred fifteen (615) matters docketed. Four hundred seventy-seven (477) final dispositions occurred during the current fiscal year. Administrative law judges issued twenty-four (24) Final Decisions on regular matters, four hundred four (404) Dismissal Orders and forty-nine (49) Show Cause Orders. In addition, there were ten (10) petitions that were not docketed due to lack of jurisdiction, which drew Dismissal Orders based on untimeliness.

It is important to note that this year’s petition receipts represent a substantial increase over the previous fiscal year.

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 2016, petition receipts increased forty-six percent (46%), which can be attributed, as previously mentioned, to the substantial increase of assessments and refund denials issued by the Tax Commissioner. These increases occurred primarily in the area of personal income tax. Of the six hundred fifteen (615) petitions docketed for fiscal year 2016, the following taxes were most often the subject of appeal:

Personal Income Tax	355
Combined Sales & Service & Use Tax	112
Corporate Net Income Tax/Business Franchise Tax	29
Withholding Tax	26
Pass Thru Entity Tax	20
Fuel – Alternative/Motor/Excise Taxes	42
Successor in Business	1
Severance Tax	7
Other Taxes	23

Total By Type of Tax: 615

In Fiscal Year 2016, the two administrative law judges of the Office of Tax Appeals conducted eight hundred eighty-five (885) proceedings, as follows:

Prehearing Conferences – in person	30
Prehearing Conferences – telephonic	84
Telephonic Status Conferences	761
Miscellaneous Motions Hearings	1
Evidentiary Hearings	9
Show Cause Evidentiary Hearings	0
Oral Arguments	0

While page one references twenty-four (24) final decisions having been issued, only five (5) of those required an evidentiary hearing. The other nineteen (19) 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 2016, four (4) mobile hearings were held in Martinsburg, West Virginia by Chief ALJ Heather G. Harlan.

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. As of the closing of the fiscal year on June 30, 2016, there were three hundred seven (307) 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: February 15, 2016

HGH/spl