INSTRUCTIONS FOR FILING AN APPEAL BEFORE THE WEST VIRGINIA OFFICE OF TAX APPEALS

STOP! – IF YOU INTEND ON FILING AN APPEAL REGARDING **PROPERTY TAXES, THIS IS THE WRONG FORM.** WE UNDERSTAND THAT A GOOGLE SEARCH MAY HAVE DIRECTED YOU TO THIS FORM, HOWEVER, GOOGLE IS INCORRECT.

TO FILE A PROPERTY TAX APPEAL PLEASE GO TO HTTP://WWW.TAXAPPEALS.WV.GOV AND LOOK FOR THE LINK ON THE BOTTOM RIGHT LABELED "PETITION FOR PROPERTY TAX APPEAL."

GENERAL INFORMATION[1]

The West Virginia Office of Tax Appeals (OTA) is a quasi-judicial statutorily created agency, where Taxpayers can appeal certain decisions made by the Tax Commissioner. The Office of Tax Appeals is not part of the Tax Department. If you are planning on filing an appeal with the OTA (making you a Petitioner), this fact is important because many Petitioners send us tax related documents and business records with notes asking for assistance. Because we are not the Tax Department, we have no access to your tax information or account. At the time you file a Petition, the OTA has no need to see personal or business records or other tax documents apart from those identified below.

The other critical information for people filing a Petition is the deadline by which an appeal must be filed. Under West Virginia law, (§11-10A9(b)) an appeal to the OTA is timely if it is filed, within sixty (60) days of your receipt of the document from the Tax Department that you are appealing[2], unless where a different time for filing a petition is specified. Petitioners may want to consult with an attorney or accountant to ensure that they do not miss a statutory filing deadline. "Filed" means postmarked or received at our office. This

[1] The information provided is not exhaustive and is intended only to provide general guidance and assistance in completing and filing a Petition to the Office of Tax Appeals. The information contained herein does not constitute legal advice. You may wish to first consult an attorney or other legal counsel before acting.

[2] This may include, but is not limited to, "Notices of Assessment," denials of tax refunds or credits, other "decisions" of the Tax Commissioner, or upon another basis such as those found in W. Va. Code §11-10-14. 28). It is critical that the Petitioner attach a copy of the document (or multiple documents) from the Tax Department that led to the filing of the appeal.

sixty (60) day deadline cannot, except in extremely rare circumstances, be extended by the OTA.

Only certain actions taken by the Tax Commissioner are appealable. Most of the time, but not always, people will come to the OTA after receiving a notice of assessment (final tax bill, not to be confused with a statement of account) or a denial of a refund or a denial of a request for a tax credit. However, there are other actions taken by the Tax Commissioner that are also appealable. Because of the sixty (60) day deadline discussed above, if you are unsure if the Tax Commissioner has taken an appealable action, you should err on the side of caution and file an appeal. The question of the OTA's jurisdiction to hear the case can be dealt with at a later date.

Much of the work on the cases before us is done by telephone. We conduct regular telephonic status conferences in each case until the parties reach an impasse on settlement and inform us that a hearing is needed. Due to the fact that much of the work is done by phone, it is imperative that we are able to reach you or your representative by phone at the time of scheduled telephonic status conferences.

REPRESENTATION AND CONFIDENTIALITY

If a Petitioner at the OTA is an individual, they can represent themselves or they may choose to be represented by an attorney. Other entities such as corporations, LLCs or partnerships must be represented by an attorney if the matter proceeds past settlement negotiations. West Virginia law also allows any Petitioner, whether an individual or a business, to be "represented" by anyone[3] (like a friend, accountant, or employee of a business), as long as that representative does not illegally practice law. The OTA has always interpreted this statute to allow accountants and other non-attorneys to assist Petitioners by discussing resolution with the Tax Department, to see if the matter can be resolved without the need for a hearing. If the matter cannot be resolved, then these "representatives" must step aside. This does not prevent the representatives from testifying on behalf of the Petitioner.

[3] See W. Va. Code §11-10A-15.

All of your information, including your name, address, and the fact that you have an appeal at the OTA is confidential. This means that if you choose a representative to assist you, or hire an attorney, we cannot discuss your case with them until you give us permission to do so. Therefore, lines 22-23 present you, the Petitioner with two choices.

By signing line 22 the Petitioner is giving the OTA (and the Tax Department) permission to speak about the case with your designated representative.

By signing line 23, you give us permission to speak to <u>any</u> accountant/attorney at whatever firm you choose to represent you.

LINE BY LINE INSTRUCTIONS

1) The Petitioner is <u>not</u> whoever is filling out the Petition. The Petitioner is the person or entity that the Tax Commissioner has taken action against. For example, if the Tax Commissioner has issued an assessment against Sue and John Smith, the Petitioner is both people, even if Sue Smith is the one filling out the Petition. By the same token, if for some reason the Tax Commissioner issues an assessment against just Sue Smith, even though she is married to John, the Petitioner would be Sue Smith, even if John is the one filling out the Petition for her.

2) No instructions
3) No instructions
4) No instructions
5) No instructions
6) No instructions
7) No instructions

8) No instructions

9-21) This portion of the appeal form is confusing for some Petitioners. Simply put, if the Petitioner is anything other than an individual or

married couple, like for example ABC Corporation, then obviously some person has to fill out the forms on the business' behalf, because ABC Corp does not have hands. Also, as stated above, much of the work on appeals is done by status conferences conducted over the phone. With that in mind, here are some examples of how lines 9-15 and 16-21 can be filled out:

1) ABC corp is the Petitioner and Joe Smith, their tax manager is filling out the Petition, and he will represent the corporation during telephonic status conferences. In that case, Joe identifies himself as the representative on line 9 and puts his info down in lines 10-15 and answers yes on line 16.

2) ABC corp is the Petitioner and Joe Smith, their tax manager is filling out the Petition, but accountant Sue Jones will represent the corporation during telephonic status conferences. In that case, Joe puts his information in lines 9-15 and Sue's information is in lines 16-21.

3) ABC corp is the Petitioner and accountant Sue Jones, is filling out the Petition, and will represent the corporation during telephonic status conferences. In that case, Sue puts her information in lines 9-15 and answers yes on line 16.

22) **ALL CASE AT THE OTA ARE CONFIDENTIAL. THE FIRST ACTION IN EVERY CASE IS A PHONE CALL. IF YOU CHECKED YES IN BOX 16 OR 18 ABOVE AND WANT US TO TALK TO SOMEONE BESIDES <u>YOU</u> PLEASE SIGN THE ATTACHED WAIVER OF CONFIDENTIALITY.**
IF YOU ARE A CORPORATION, PARTNERSHIP OR LLC AND YOU WANT US TO TALK TO SOMEONE OTHER THAN AN OFFICER, PARTNER OR MEMBER THEN AN OFFICER, PARTNER OR MEMBER MUST SIGN THE WAIVER OF CONFIDENTIALITY. FINALLY, IF YOU ARE AN ACCOUNTANT FILLING OUT A PETITION ON BEHALF OF A CLIENT, THE CLIENT MUST SIGN THE WAIVER OF CONFIDENTIALITY.

23) No instructions

24) Under West Virginia law, a Petitioner may request that their appeal at the OTA be handled as a small claim matter. An appeal can only be handled as a small claim if: 1) the Tax Commissioner agrees and 2) the amount in dispute does not exceed ten thousand dollars ($10,000) for any one taxable year. Small claims cases are handled more informally than regular appeals and the final decision from the OTA is not appealable by either party to Circuit Court.

25) No instructions.

26) It is critical that the Petitioner attach a copy of the document (or multiple documents) from the Tax Department that led to the filing of the appeal. PLEASE NOTE THAT YOU ONLY NEED TO FILL OUT ONE APPEAL FORM, EVEN IF YOU HAVE MULTIPLE DOCUMENTS FROM THE TAX DEPARTMENT THAT YOU WISH TO APPEAL. These documents are needed not only to inform us as to what your appeal is about generally, but also to confirm that the appeal has been timely filed. Additionally, as stated above, there are certain actions taken by the Tax Commissioner that are not appealable. Failure to include these documents at the time of filing can delay the resolution of your case. Finally, it should be noted that the document or documents that form the nature of your appeal are the only documents required to be included with your appeal. Because the OTA is not the Tax Department it is not necessary to send us tax filings or other papers that would normally be filed with the Tax Department.

27) No instructions

28) No instructions

PETITION FOR APPEAL BEFORE THE WEST VIRGINIA OFFICE OF TAX APPEALS[4]

Docket No. _____

(to be filled in by the OTA)

I) INFORMATION ABOUT THE PETITIONER

1) Name of Petitioner _____

2) The Petitioner is: (check all that apply)

☐ Individual	☐ Married filing jointly
☐ Married filing separately	☐ Sole Proprietorship
☐ Corporation	☐ Partnership
☐ Single Member LLC	☐ Multi-Member LLC
☐ 501(c)(3)	☐ State Agency or Political Subdivision

3) The Petitioner is doing business as ("DBA") (if applicable) _____

4) Petitioner's Address _____

_____

_____

5) Petitioner's Phone Number _____

6) Phone number you would like to be contacted at for telephonic status conferences (if different from line 5)

_____

7) Fax Number of Petitioner (if applicable)_____

8) Petitioner's email _____

[4] THE PETITION MUST BE FILED WITH THE OFFICE OF TAX APPEALS AND **NOT** WITH THE TAX DEPARTMENT.

II. INFORMATION ABOUT THE PERSON FILLING OUT THE PETITION

9) This Petition is being filled out by:

☐ Petitioner **(NOTE, IF THE PETITIONER IS A CORPORATION, LLC OR PARTNERSHIP THEN THE PETITION IS BEING FILLED OUT BY A REPRESENTATIVE)** ☐ Representative ☐ Lawyer

10) If the Petition is being filled out by someone other than the Petitioner please print your name below:

_____

10) Relationship to Petitioner (**FOR EXAMPLE, ARE YOU AN OFFICER IN A CORPORATION OR A MEMBER OF AN LLC? OR ARE YOU AN ACCOUNTANT ETC FILLING OUT THE PETITION FOR A CLIENT)** _____

12) Address if different from Line 4.

_____

_____

_____

13) Phone Number, if different from Line 5_____

14) Fax Number, if different from Line 7 _____

15) Email, if different from Line 8_____

III. INFORMATION ABOUT THE PETITIONER'S REPRESENTATIVE (If applicable)

16) Does the Petitioner want the person identified in Line 10 above to represent them? ☐ Yes ☐ No

17) If Yes, skip to Line 22.

18) If No, does the Petitioner want someone else to represent them?

☐ Yes ☐ No

19) If Yes, please provide the representative's information below

Name_____

Address_____

_____

_____

_____

_____

Phone Number _____

20) Fax Number (if applicable) _____

21) Email _____

IV WAIVER OF CONFIDENTIALITY

22) **ALL CASE AT THE OTA ARE CONFIDENTIAL. THE FIRST ACTION IN EVERY CASE IS A PHONE CALL. IF YOU CHECKED YES IN BOX 16 OR 18 ABOVE AND WANT US TO TALK TO SOMEONE BESIDES <u>YOU</u> PLEASE SIGN THE ATTACHED WAIVER OF CONFIDENTIALITY.**
IF YOU ARE A CORPORATION, PARTNERSHIP OR LLC AND YOU WANT US TO TALK TO SOMEONE OTHER THAN AN OFFICER, PARTNER OR MEMBER THEN AN OFFICER, PARTNER OR MEMBER MUST SIGN THE WAIVER OF CONFIDENTIALITY. FINALLY, IF YOU ARE AN ACCOUNTANT FILLING OUT A PETITION ON BEHALF OF A CLIENT, THE CLIENT MUST SIGN THE WAIVER OF CONFIDENTIALITY.

23) ☐ I have checked yes on line 16 or 18 above and have signed the attached waiver of confidentiality.

V SMALL CLAIM TREATMENT

24) ☐ I would like my appeal to be handled as a small claim case pursuant to West Virginia Code Section 11-10A-11.

VI INFORMATION ABOUT THE APPEAL

25) Please explain in simple terms what action the Tax Commissioner has taken that led to this appeal. (attach a separate sheet if necessary) Please also explain why you disagree with the actions taken (be specific).

_____

_____

_____

_____

_____

_____

_____

_____

HAVE YOU ATTACHED A COPY OF THE DOCUMENT(s) FROM THE TAX DEPARTMENT THAT LED TO THE FILING OF THIS APPEAL?

☐ Yes ☐ No. If no, why not? _____

26) What date did you received the attached document?

_____

27) If this matter proceeds to a hearing, does the Petitioner or any other person need special accommodation? ☐ Yes ☐ No

28) If yes, please explain the nature of the accommodation necessary:_____

VII SIGNATURE

_____ _____

Petitioner or Representative Date

Please **Hand deliver, Mail**, **Fax,** or **Email** your petition, and a copy of paperwork you received from the WV Tax Department to:

West Virginia Office of Tax Appeals
1012 Kanawha Boulevard, East, Suite 300
Charleston, WV 25301

FAX: 304-558-1670
EMAIL: wvota@wv.gov

WAIVER OF CONFIDENTIALITY

I _____ by my signature below, hereby give the West Virginia Office of Tax Appeals, and the West Virginia Tax Department permission to discuss with the person or firm listed below, any appeals currently pending. I expressly waive the confidentiality provisions of West Virginia Code Section 11-10-5d, as it relates to my tax returns and return information for the tax periods and tax years at issue in this appeal or appeals.

LIST DOCKET NUMBERS HERE

_____

_____

_____ _____

Signature Date

Representative Name (can be an individual or entire business or firm)

_____

_____

Address

_____

_____

_____

Phone Number _____

Email _____