

# WEST VIRGINIA OFFICE OF



## TAX APPEALS

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### ANNUAL REPORT TO THE LEGISLATURE FOR FISCAL YEAR 2019

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 2019, 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 seventy-two (472) regular petitions and one hundred twenty-six (126) small claims petitions were filed, in accordance with the statutory requirements and the administrative rules for this OTA, for a total of five hundred ninety-eight (598) matters docketed. Seven hundred fourteen (714) final dispositions occurred during the current fiscal year. Administrative law judges issued twenty-five (25) Final Decisions on regular matters, six hundred fifty-seven (657) Dismissal Orders and thirty-two (32) Show Cause Orders. Petitions that were ruled and dismissed as "not-timely" totaled nine (9).

This year's petition receipts represent a 45% increase over the prior fiscal year of four hundred eleven (411). 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.

In the majority of cases, OTA conducts follow-up telephonic conferences to assist the parties in moving cases forward. Of the five hundred ninety-eight (598) petitions docketed for fiscal year 2019, the following taxes were most often the subject of appeal:

Personal Income Tax	386
Combined Sales & Service & Use Tax	73
Corporate Net Income Tax/Business Franchise Tax	17
Withholding Tax	19
Pass Thru Entity Tax	12
Fuel – Alternative/Motor/Excise Taxes	29
Successor in Business	9
Severance Tax	11
Other Taxes	42

Total by Type of Tax: 598

In Fiscal Year 2019, two administrative law judges of the Office of Tax Appeals conducted nine hundred seventeen (917) proceedings, as follows:

Prehearing Conferences – in person	21
Prehearing Conferences – telephonic	24
Telephonic Status Conferences	852
Miscellaneous Motions Hearings	0
Evidentiary Hearings	20
Show Cause Evidentiary Hearings	0
Oral Arguments	0

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 2019, there were a total of seven (7) evidentiary mobile docket hearings held across three (3) locales: Martinsburg – four (4), Clarksburg – two (2), Wheeling – one (1). Telephonic pre-hearings for all dockets totaled twenty (20).

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As of the closing of the fiscal year on June 30, 2019, there were four hundred twenty-seven (427) 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

2/12/20  
Date

SPL/AMP