

**ANNUAL ACTIVITY REPORT
TO THE LEGISLATURE
BY THE CHIEF AMINISTRATIVE LAW JUDGE FOR THE
WEST VIRGINIA OFFICE OF TAX APPEALS (“OTA”)
PURSUANT TO W. VA. CODE § 11-10A-7(b)(6) [2002]**

**FOR THE SHORT FIRST FISCAL YEAR
(THE FIRST SIX-MONTH PERIOD) OF OPERATIONS
FROM JANUARY 01, 2003 THROUGH JUNE 30, 2003**

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(1) Number & Types of Matters Handled:

Petitions Filed (Docketed) (by docket numbers):

Small Claim Petitions	119
Regular (non- small claim) Petitions	275
Total Petitions Filed (docketed)—about 20% increase from preceding year under prior system:	394

Types of Tax or Other Matter (in order, most to least):

Personal Income	90
Corporate Charter	81
Consumers’ Sales and Service (excluding officer liability)	61
Use tax	53
Severance	24
Withholding (excluding officer liability)	18
Officer Liability—Consumers’ Sales and Service	12
Corporate Net Income	10
Business Franchise	9
Health Care Provider (Broad-based)	9
Business Registration	8
Coal Reclamation	5
Officer Liability—Withholding	4
Special Tax on Coal	4
Bingo & Charitable Raffle	2
Estate Tax	1
Gasoline & Special Fuel Excise	1
Gasoline & Special Fuel Sales	1
International Fuel Tax Agreement (IFTA)	1
All Other State Tax Types (Cigarette, Soft Drink, Telecommunications, etc.)	0
 Total	 394

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(2) Number of 394 Matters Pending at End of Fiscal Year (first 6-month period):

Pending Hearing Pending Decision Total "Open" as of 06/30/03	173 16 189	Deleted: 15
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Notes:

(1) Under the requirements of the organic statute, W. Va. Code §§ 11-10A-1 [2002] *et seq.* and the procedural rules, 121 C.S.R 1 (the latter were formally filed on April 20, 2003), it takes about 180 days (6 months) for a typical, regular (non- small claim) matter to be heard: (a) the evidentiary hearing is set initially for a date that is about 90 days after the petition is filed (to allow for the Tax Commissioner to file an answer, the parties to hold a first conference, etc.); and (b) a first request for a "continuance," that is, a postponement, of the hearing (based upon an on-going attempt by the parties to resolve the matter without a hearing, or based upon scheduling conflicts, etc.) is usually granted for a period of up to 90 days past the initially set hearing date.

(2) **ALL** regular (non- small claim) matters were decided (by the then 2 administrative law judges on staff) in time frames that were well within the statutory period of 6 months after the matter was fully submitted (that is, after the receipt of all evidence and post-hearing memoranda of law).

ALL small claim matters were decided well within the self-imposed 90-day period, after full submission of the matter, set forth in the procedural rules for small claim matters.

In other words: as of 06/30/03 (and as of 12/31/03, for that matter), there literally were no (zero) "late" decisions at all: **VERY EFFICIENT INDEED!**

Important Statistics not required to be stated by W. Va. Code § 11-10A-7(b)(6) [2002]:

No. of Hearings (for this first 6-month reporting period—see note (1) above; all evidentiary):	75
No. of Decisions (for first 6-month reporting period; some matters are submitted for decision on documents only, without an evidentiary hearing):	151

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In addition to the matters formally docketed, OTA, during this first six-month period, refused, with written notice, to process 12 clearly untimely filed petitions, as required by law.

During this first six-month period, OTA also disposed of another 47 matters informally -- without formal docketing, hearings, or decisions -- that is, by contacting the parties by telephone or letter and persuading the parties to resolve matters that clearly did not need to be administratively litigated (on what proved to be the undisputed facts and law) or which, under a cost/benefit analysis, should not be administratively litigated.

With respect to this last category of matters, OTA cannot stress enough that the Legislature should fully fund the PRE-assessment procedure, including conciliation staff within the State Tax Commissioner's budget, as set forth in the proposed legislative rules developed by the State Tax Commissioner -- and as required by the Legislature as part of the same legislation creating OTA. Taxpayers and the State would save significant administrative litigation costs overall, and the "cash flow" for State revenues would be significantly enhanced, by fully funding the legislatively required pre-assessment procedure, including conciliation staff. In addition, of course, OTA would have more time to devote its attention to those truly quasi-judicial matters that the Legislature intended all along for OTA, as an independent, court-like agency, to handle, that is, matters truly needing administrative litigation. Without such full funding, OTA, as under the prior system, will continue to be, frankly, a "garbage can" for many (mostly small amount) matters that are better resolved by the pre-assessment/conciliation procedure before the State Tax Commissioner.

