

**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 FIRST FULL FISCAL YEAR OF OPERATIONS--
FROM JULY 01, 2003 THROUGH JUNE 30, 2004**

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(1) Number & Types of Matters Handled:

(a) Petitions Filed (Docketed) (by docket numbers):

Small Claim Petitions	316
Regular (non- small claim) Petitions	423
<u>Total Petitions Filed</u> (docketed)--about 20% increase from the last full year under the prior system:	739

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

Personal Income	174
Consumers’ Sales and Service (excluding officer liability)	118
Corporate Charter	105
Use tax	83
Withholding (excluding officer liability)	53
Business Franchise	38
Corporate Net Income	34
Severance	31
Health Care Provider (Broad-based)	16
Corporate Net Income/Business Franchise--Combined return	16

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Officer Liability--Consumers' Sales and Service	15
Various State Taxes (Tobacco Excise, Soft Drink, Telecommunications, etc.)	14
Officer Liability--Withholding	14
Special Tax on Coal Production-- \$0.02/ton--Code § 22-3-32	8
Business Registration	8
Gasoline & Special Fuel Sales	4
Gasoline & Special Fuel Use	3
Estate Tax	2
International Fuel Tax Agreement (IFTA)	2
Bingo & Charitable Raffle	1
Special Reclamation Tax on Surface-Mined Clean Coal-- \$0.03/ton, etc.--Code § 22-3-11(h), etc.	0
Tobacco Settlement Enforcement Monetary Penalty-- Code § 16-9D-8(a)	0
Declaratory Ruling	0
All Other Taxes & Matters	0
 <u>Total Petitions Filed</u>	 739

*(2) Number of 739 Petitions Pending ("Open") at End of First Fiscal Year
(June 30, 2004):*

<u>Pending HEARING</u> (not yet fully submitted for decision)--	
Bluefield mobile docket	0
Bridgeport mobile docket	61
Martinsburg mobile docket	40
Wheeling mobile docket	29
Main, Charleston docket	168

<u>Total Pending HEARING</u>	298 [See Note (1)]
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<u>Pending DECISION</u> (fully submitted for decision)--	16
<u>Total Pending ("Open")</u> as of 06/30/04	314

*Important Statistics not required to be stated by W. Va. Code § 11-10A-7(b)(6)
[2002] (for the first fiscal year ended June 30, 2004):*

Proceedings Held:

(1) Prehearing Conferences Held (OTA started keeping separate statistics on these as of Jan., '04)--	35
(2) Status Conferences Held (OTA started keeping separate statistics on these as of Jan., '05)--	0
(3) Hearings on Miscellaneous Motions (OTA started keeping separate statistics on these as of July, '04)--	0
(4) Evidentiary Hearings Held--	226
<u>Total Proceedings Held</u>	261

Dispositions by OTA:

(1) Orders Entered Refusing to Docket Petitions which were clearly Tendered Untimely for Filing--	5
(2) Letters Refusing to Docket Significantly Deficient Petitions (OTA started keeping separate statistics on these as of Jan., '05) --	0

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(3) Final Orders Entered (OTA started keeping separate statistics on these as of July, '04)--	0
(4) Final Decisions -- with Discussions & Synopsis point(s) (non- small claim & small claim; <u>some matters are submitted for decision on documents only, without an evidentiary hearing in person</u>)--	298 [See Note (2)]
(5) Cases Resolved Informally by OTA (without formal Docketing, Hearings, or formal Decisions or Orders) --	254 [See Note (3)]
<u>Total Dispositions</u> by OTA	557

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 (effective April 20, 2003), it takes about 180 days (6 months) for a typical, regular (non- small claim) matter to be heard: (1) 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 their first conference, etc.); and (2) 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.

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(2) ALL regular (non- small claim) matters were decided (by the three full-time administrative law judges on staff) in time frames that were well within the statutory period of six (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 06/30/04 (or on any other date, for that matter), there literally were no (zero) “late” decisions at all: **VERY EFFICIENT INDEED!**

(3) These 254 matters were resolved by OTA very informally, 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 (as soon as possible), and the Tax Commissioner should promptly hire the necessary staff for, the PRE-assessment procedure, including conciliation staff within the State Tax Commissioner’s budget, as set forth in the existing, approved legislative rules 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 and utilizing 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 contested, 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 and staffing, OTA, as under the prior system, will remain, frankly, a “dumping place” for many “tempests in a teacup” which the Legislature has already decided should be resolved by the less formal, less expensive, and quicker, pre-assessment/conciliation procedure before the State Tax Commissioner (taxpayers could represent themselves or could be represented by, for example, certified public accountants).

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Respectfully submitted,

R. Michael Reed
Chief Administrative Law Judge
West Virginia Office of Tax Appeals

Date

RMR:jt

