

# WEST VIRGINIA OFFICE OF



## TAX APPEALS

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A. M. "FENWAY" POLLACK  
CHIEF ADMIN. LAW JUDGE

### ANNUAL REPORT TO THE LEGISLATURE FOR FISCAL YEAR 2011

The West Virginia Office of Tax Appeals 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. The Office of Tax Appeals operates with a small staff consisting of one chief administrative law judge who is appointed by the Governor, two administrative law judges, one executive director, and five support personnel.

In the preceding fiscal year, 359 regular and 98 small claims petitions were filed in accordance with the statutory requirements and the rules of procedure for this office, for a total of 457 matters docketed.

Four hundred and forty-four final dispositions occurred during the fiscal year. Administrative law judges entered (45) forty-five final decisions on regular matters and (381) three hundred and eighty-one Dismissal Orders, (8) eight Show Cause Orders, (10) ten Intent to Dismiss Orders.

During fiscal year 2011, the Office of Tax Appeals experienced the resignation of its Chief ALJ when Michele Duncan Bishop accepted a new position at the Attorney General's Office on January 1, 2011. On March 16, 2011, then Acting Governor Earl Ray Tomblin appointed A. M. "Fenway" Pollack to fill Ms. Bishop's unexpired term. While many of Ms. Bishop's policies continued under Judge Pollack, some changes were implemented to facilitate better court operations. The use of the telephonic status conference was enhanced to ensure that at least one was conducted in all cases, as soon as possible after a petition had been received (usually within fourteen days). These telephonic conferences, in the vast majority of cases, begin a dialog between the parties that leads to resolution of the matter without the necessity of an evidentiary hearing. Overall, court operations continue to be strengthened for efficiency.

Of the 457 petitions docketed during the fiscal year, the following taxes were most often the subject of appeal:

Personal Income Tax	149
Combined Sales & Use	85
Consumers Sales and Service Tax	44
Corporate Net Income/Business Franchise – (Combined Return)	43
Withholding Tax	29
Pass Thru Entity Tax	27
Motor Fuel Excise Tax	18
Use Tax	17
Business Registration Tax	17
Severance Tax	9
Corporate Net Income Tax	8
Business Franchise Tax	3
Cigarette and Tobacco Products Tax	3
Motor Carrier Road Tax	2
** Property Tax	1
Soft Drink Tax	1
International Fuel Tax Agreement	1

Total Type of Tax: 457

In Fiscal Year 2011, the three administrative law judges of the Office of Tax Appeals conducted 390 proceedings, as follows:

Prehearing Conferences	52
Telephonic Status Conferences	307
Miscellaneous Motions Hearings	0
* Evidentiary Hearings	14
Show Cause Evidentiary Hearings	12
Oral Arguments Conducted	1
License Revocation Hearings	2

\*\* Agency policy requires that all incoming petitions are docketed. In this case, once it was clearly ascertained that it involved a matter outside of the jurisdiction of the Office of Tax Appeals, the matter was dismissed.

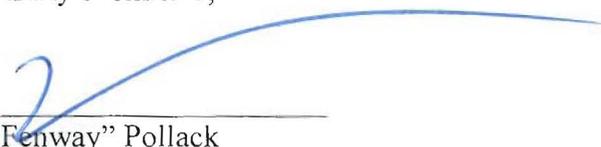
\* While page one references 45 final decisions having been issued, only 14 of those required an evidentiary hearing. The other 31 final decisions would have come about by a variety of means, including the parties stipulating to the relevant facts and/or filing legal briefs.

The Office of Tax Appeals conducts most proceedings at its office in Charleston. However, at the time a taxpayer files a petition for appeal, he or she may elect 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. However, in fiscal year 2011, only one mobile hearing was held, in Bluefield, WV, due to the untimely death of Administrative Law Judge Robert W. Kiefer.

With the exception of one case, all non-small claim matters were decided well within the statutorily-required time frame of (6) months after the matter was fully submitted. The one anomaly occurred during the interim period when the agency did not have a Chief ALJ. The decision was issued within a very short period of time once the Chief ALJ vacancy was filled.

All small claim matters were decided well within the internally-imposed 90-day period as set forth in the procedural rules for small claim matters.

Respectfully submitted,



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A.M. "Fenway" Pollack  
Chief Administrative Law Judge

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02-15-2012  
Date

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