

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

House Bill 3391

BY DELEGATES HOUSEHOLDER AND GEARHEART

[Passed March 3, 2023; in effect from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §11-3-25b; and to amend and reenact §11-10A-19 of said code, all relating to
3 appeals to the Office of Tax Appeals; establishing filing deadlines for appeals of property
4 tax valuations and issues involving property tax classification and taxability to the West
5 Virginia Office of Tax Appeals, providing that appeal petitions of property tax issues to the
6 West Virginia Office of Tax Appeals shall be heard *de novo*, providing a time frame for
7 hearings before the Office of Tax Appeals regarding property tax matters, clarifying that
8 the Intermediate Court of Appeals has jurisdiction to hear appeals from a final decision of
9 a property tax matter by the Office of Tax Appeals, and clarifying that further appeals are
10 to the Supreme Court of Appeals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-25b. Appeal to Office of Tax Appeals.

1 (a) In all cases involving appeal to the Office of Tax Appeals from a property tax valuation
2 pursuant to §11-3-15i or §11-3-23a of this code, or from an order of a County Commission sitting
3 as a Board of Equalization and Review pursuant to §11-3-24 of this code, the appeal petition must
4 be filed with the Office of Tax Appeals by March 31 of the property tax year as defined in §11-3-
5 1 of this code to be considered timely filed. If a petition of appeal is not filed with the Office of Tax
6 Appeals by March 31 of the property tax year, then it shall be dismissed as untimely.

7 (b) In all cases involving appeal to the Office of Tax Appeals from a property tax ruling on
8 taxability or classification by the Tax Commissioner pursuant to §11-3-24a of this code, the appeal
9 petition must be filed within 30 days after receiving written notice of the Tax Commissioner's
10 ruling. If a petition of appeal is not timely filed with the Office of Tax Appeals, then it shall be
11 dismissed.

12 (c) In all cases involving property tax matters brought before the Office of Tax Appeals
13 pursuant to subsections (a) and (b) of this section, the hearing before the Office of Tax Appeals

14 shall be *de novo* as provided in §11-10A-10 of this code. Notwithstanding the provisions of §11-
15 10A-10 of this code, a property tax appeal to the Office of Tax Appeals involving valuation,
16 classification, or taxability may be set for hearing within 90 days of the due date of the answer
17 unless continued by order of the Office of Tax Appeals for good cause.

18 (d) The provisions of this section shall be effective for all property tax appeals to the Office
19 of Tax Appeals made on or after January 1, 2023.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-19. Judicial review of office of tax appeals decisions.

1 (a) Either the taxpayer or the commissioner, or both, or in the case of property taxes the
2 county assessor, or county commission, may appeal the final decision or order of the Office of
3 Tax Appeals by taking an appeal to the Intermediate Court of Appeals of this state within 30 days
4 after entry of the final decision or order.

5 (b) The Office of Tax Appeals may not be made a party in any judicial review of a decision
6 or order it issued.

7 (c) The appeal proceeding shall be instituted by filing a notice of appeal with the
8 Intermediate Court of Appeals, within the 30 day period prescribed in subsection (a) of this
9 section.

10 (d) If the appeal is of an assessment, except a jeopardy assessment for which security in
11 the amount thereof was previously filed with the Tax Commissioner, then within 90 days after the
12 notice of appeal is filed, or sooner if ordered by the Intermediate Court of Appeals, the petitioner
13 shall file with the clerk of the Intermediate Court of Appeals a cash bond or a corporate surety
14 bond approved by the clerk. The surety must be qualified to do business in this state. These bonds
15 shall be conditioned upon the petitioner performing the orders of the court. The penalty of this
16 bond shall be not less than the total amount of tax or revenue plus additions to tax, penalties, and
17 interest for which the taxpayer was found liable in the administrative decision of the office of tax
18 appeals. Notwithstanding the foregoing and in lieu of the bond, the Tax Commissioner, upon

19 application of the petitioner, may upon a sufficient showing by the taxpayer, certify to the clerk of
20 the Intermediate Court of Appeals that the assets of the taxpayer are adequate to secure
21 performance of the orders of the court: *Provided*, That if the Tax Commissioner refuses to certify
22 that the assets of the taxpayer or other indemnification are adequate to secure performance of
23 the orders of the court, then the taxpayer may apply to the Intermediate Court of Appeals for the
24 certification. No bond may be required of the Tax Commissioner.

25 (e) The Intermediate Court of Appeals shall hear the appeal as provided in §29A-5-4 of
26 this code: *Provided*, That when the appeal is to review a decision or order on a petition for refund
27 or credit, the court may determine the legal rights of the parties, but in no event shall it enter a
28 judgment for money.

29 (f) Unless the Tax Commissioner appeals an adverse court decision, the commissioner,
30 upon receipt of the certified order of the court, shall promptly correct his or her assessment or
31 issue his or her requisition on the treasury or establish a credit for the amount of an overpayment.

32 (g) Either party may appeal an Intermediate Court of Appeals' decision to the Supreme
33 Court of Appeals as provided in §29A-6-1 *et seq.* of this code.

34 (h) For all appeals regarding property tax assessments, taxability, and classifications
35 pursuant to §11-3-1 *et seq.*, the standard of proof which a taxpayer must meet at all levels of
36 review and appeal shall be a preponderance of the evidence standard.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2023.

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Governor