

# WEST VIRGINIA OFFICE OF



## TAX APPEALS

1012 Kanawha Blvd., East  
Suite #300  
P.O. Box 2751  
Charleston, WV 25330-2751

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

Telephone: (304) 558-1666  
Fax: (304) 558-1670  
Web Address: [www.taxappeals.wv.gov](http://www.taxappeals.wv.gov)  
Email Acct: [wvota@wv.gov](mailto:wvota@wv.gov)

### ANNUAL REPORT TO THE LEGISLATURE FOR FISCAL YEAR 2017

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 2017, the Office of Tax Appeals operated with a small staff consisting of one chief administrative law judge ("CALJ") who is appointed by the Governor, one (1) administrative law judge ("ALJ"), one (1) executive director, and three (3) support personnel. Between fiscal years 2012 and 2014, to reduce budget expenditures and streamline operations, the OTA permanently removed three (3) positions, reducing our staff from nine (9) to six (6) personnel. In addition, CALJ Heather Harlan worked as a lone ALJ from July 1, 2016 until October 16, 2016 when Crystal Flanigan was then hired to fill our vacant ALJ position. Further, during the last 3 months of this fiscal year, we were without the services of a Chief ALJ. In December of 2017, A.M. "Fenway" Pollack was appointed as Chief ALJ, filling the unexpired term of CALJ Heather Harlan, who had resigned in November 2017.

In the preceding fiscal year, three hundred thirty-seven (337) regular petitions and seventy-six (76) small claims petitions were filed, in accordance with the statutory requirements and the administrative rules for this OTA, for a total of four hundred thirteen (413) matters docketed. Four hundred four (404) final dispositions occurred during the current fiscal year. Administrative law judges issued four (4) Final Decisions on regular matters, three hundred eighty-six (386) Dismissal Orders and fourteen (14) Show Cause Orders. In addition, there were seven (7) petitions that were not docketed due to lack of jurisdiction, which drew Dismissal Orders based on untimeliness.

This year's petition receipts represent a decrease over the previous fiscal year by thirty-one percent (31%).

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 vast majority of cases, OTA conducts follow-up telephonic conferences to assist the parties in moving cases forward. Of the four hundred thirteen (413) petitions docketed for fiscal year 2017, the following taxes were most often the subject of appeal:

Personal Income Tax	235
Combined Sales & Service & Use Tax	73
Corporate Net Income Tax/Business Franchise Tax	26
Withholding Tax	20
Pass Thru Entity Tax	11
Fuel – Alternative/Motor/Excise Taxes	25
Successor in Business	0
Severance Tax	10
Other Taxes	13

Total by Type of Tax: 413

In Fiscal Year 2017, the two administrative law judges of the Office of Tax Appeals conducted eight hundred ninety-four (894) proceedings, as follows:

Prehearing Conferences – in person	16
Prehearing Conferences – telephonic	78
Telephonic Status Conferences	732
Miscellaneous Motions Hearings	2
Evidentiary Hearings	66
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 2017, sixteen (16) mobile hearings were held in Martinsburg, West Virginia by Chief ALJ Heather G. Harlan and ALJ Crystal Flanigan.

February 14, 2018

As of the closing of the fiscal year on June 30, 2017, there were three hundred seventy-six (376) proceedings pending before this Tribunal. Included in this total, were 83 cases held in abeyance due to awaiting the outcome of several controversial issues still pending decision at the State Circuit and Supreme Courts. One tax issue is still pending at the U.S Supreme Court.

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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Stephen P. Lee  
Executive Director/Clerk of Court  
West Virginia Office of Tax Appeals

02/15/2018  
Date

SPL/AMP/dad