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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2002

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4305

(By Mr. Speaker, Mr. Kiss, and Delegates Douglas,
Coleman, Ennis, Hrutkay, Varner and Armstead)

Passed March 8, 2002

In Effect Ninety Days from Passage

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H. B. 4305

(BY MR. SPEAKER, MR. KISS, AND DELEGATES DOUGLAS,
COLEMAN, ENNIS, HRUTKAY, VARNER AND ARMSTEAD)

[Passed March 8, 2002; in effect ninety days from passage.]

AN ACT to amend and reenact sections four, eight, nine, nine-a, ten, fourteen and seventeen, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article by adding thereto three new sections, designated sections ten-a, twenty-three and twenty-four; and to amend said chapter by adding thereto a new article, designated article ten-a, all relating to tax administration and hearing procedures; requiring filing of new petitions and transferring certain pending petitions to office of tax appeals; requiring tax commissioner to issue certain decisions; authorizing tax commissioner to acquiesce or not acquiesce; increasing amount of interest charged on underpayments of taxes; requiring establishment of alternative dispute resolution mechanisms; requiring tax commissioner to study need for taxpayer resolution program and report to Legislature; stating legislative finding and purpose;

defining certain terms; creating office of tax appeals; requiring principal office at state capital; allowing hearings at other locations; requiring a seal; providing for appointment, term, vacancy, qualification, compensation and removal of chief administrative law judge and prohibiting conflicts of interest; setting forth powers and duties of chief administrative law judge; requiring certain employees be members of classified service; setting forth qualifications of administrative law judges; authorizing transfer of current employees; stating jurisdiction of office of tax appeals; requiring filing of petition and answer to initiate proceedings; setting forth hearing procedures; authorizing small claims hearings; specifying powers to decide matters; authorizing the issuance of subpoenas and stating procedures; requiring certain hearings be recorded; transcript; providing for appearances before the office of tax appeals; requiring all decisions to be in writing and certain decisions be published; requiring service of notice of decisions; establishing finality of decisions; providing for judicial review; requiring rules of practice and procedure; defining timely filing; setting forth time for performance of act when last day falls on weekend or legal holiday; and confidentiality.

Be it enacted by the Legislature of West Virginia:

That sections four, eight, nine, nine-a, ten, fourteen and seventeen, article ten, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto three new sections, designated sections ten-a, twenty-three and twenty-four; and that said chapter be amended by adding thereto a new article, designated, ten-a, all to read as follows:

ARTICLE 10. PROCEDURE AND ADMINISTRATION.

§11-10-4. Definitions.

1 For the purpose of this article, the term:

2 (a) "Officer or employee of this state" shall include, but is
3 not limited to, any former officer or employee of the state of
4 West Virginia.

5 (b) "Office of tax appeals" means the West Virginia office
6 of tax appeals created by section three, article ten-a of this
7 chapter.

8 (c) "Person" shall include, but is not limited to, any
9 individual, firm, partnership, limited partnership, copartnership,
10 joint venture, association, corporation, municipal corporation,
11 organization, receiver, estate, trust, guardian, executor, admin-
12 istrator, and also any officer, employee or member of any of the
13 foregoing who, as an officer, employee or member, is under a
14 duty to perform or is responsible for the performance of an act
15 prescribed by the provisions of this article and the provisions of
16 any of the other articles of this chapter which impose taxes
17 administered by the tax commissioner, unless the intention to
18 give a more limited or broader meaning is disclosed by the
19 context of this article or any of the other articles of this chapter
20 which impose taxes administered by the tax commissioner.

21 (d) "State" means any state of the United States or the
22 District of Columbia.

23 (e) "Tax" or "taxes" includes within the meaning thereof
24 taxes specified in section three of this article, additions to tax,
25 penalties and interest, unless the intention to give the same a
26 more limited meaning is disclosed by the context.

27 (f) "Tax commissioner" or "commissioner" means the tax
28 commissioner of the state of West Virginia or his or her
29 delegate.

30 (g) "Taxpayer" means any person required to file a return
31 for any tax administered under this article, or any person liable
32 for the payment of any tax administered under this article.

33 (h) "Tax administered under this article" means any tax to
34 which this article applies as set forth in section three of this
35 article.

36 (i) "This code" means the code of West Virginia, one
37 thousand nine hundred thirty-one, as amended.

38 (j) "This state" means the state of West Virginia.

**§11-10-8. Notice of assessment; petition for reassessment or
payment of assessment within sixty days; finality
of assessment; payment of final assessment;
effective date.**

1 (a) *Notice of assessment.* — The tax commissioner shall
2 give the taxpayer written notice of any assessment or amended
3 or supplemental assessment made pursuant to this article. The
4 assessment or amended or supplemental assessment, as the case
5 may be, shall become final and conclusive of the liability of the
6 taxpayer and not subject to either administrative or judicial
7 review under the provisions of sections nine or nine-a, and ten
8 of this article, or under the provisions of sections ten or eleven,
9 and nineteen of article ten-a of this chapter, unless the taxpayer
10 to whom a notice of assessment or amended or supplemental
11 assessment, is given, shall within sixty days after service
12 thereof (except in the case of jeopardy assessments, as to which
13 the time for filing a petition is specified in section seven of this
14 article) either:

15 (1) *Petition for reassessment.* — Personally or by certified
16 mail, files with the tax commissioner a petition in writing,
17 verified under oath by the taxpayer or his or her duly authorized
18 agent, having knowledge of the facts, setting forth with
19 particularity the items of the assessment objected to, together
20 with the reasons for the objections: *Provided*, That for all
21 assessments received after the thirty-first day of December, two

22 thousand two, the taxpayer shall file the petition with the office
23 of tax appeals in accordance with the provisions of section nine,
24 article ten-a of this chapter; or

25 (2) *Payment of assessment.* — Personally or by certified
26 mail, remits to the tax commissioner the total amount of the
27 assessment or amended or supplemental assessment, including
28 the additions to tax and penalties as may have been assessed
29 and the amount of interest due.

30 (b) *Finality of assessment.* — The amount of an assessment
31 or amended or supplemental assessment shall be due and
32 payable on the day following the date upon which the assess-
33 ment or amended or supplemental assessment becomes final.
34 Payment of the amount of the assessment, or amended or
35 supplemental assessment, as provided in subdivision (2)
36 subsection (a) of this section, within sixty days after service of
37 notice of the assessment does not prohibit or otherwise bar the
38 taxpayer from filing a claim for refund or credit under the
39 provisions of section fourteen of this article within the time
40 prescribed therein for the filing of a claim for refund or credit.

41 (c) *Payment of assessment after petition filed.* — A tax-
42 payer who has timely filed a petition for reassessment may, at
43 any time prior to issuance of the administrative decision under
44 section nine or nine-a of this article, or under sections ten or
45 eleven, article ten-a of this chapter, pay under protest the
46 amount of the assessment. Upon payment, the contested case
47 shall thereafter be treated for all purposes as a petition for
48 refund: *Provided*, That if payment is made after the administra-
49 tive hearing under section nine or nine-a of this article or under
50 section ten or eleven, article ten-a of this chapter, has com-
51 menced or concluded, a new hearing may not be held, but the
52 record shall be properly amended to show that the amount
53 assessed has been paid under protest by the taxpayer and that
54 the petition for reassessment previously filed under this section

55 or under section nine, article ten-a of this chapter is now to be
56 treated as a petition for refund filed under section fourteen of
57 this article.

§11-10-9. Hearing procedure.

1 (a) When a petition for reassessment provided for in section
2 eight of this article, or a petition for refund or credit provided
3 for in section fourteen of this article, is filed within the time
4 prescribed for filing, or a hearing is requested pursuant to the
5 provisions of any other article of this chapter which is adminis-
6 tered under this article, the tax commissioner shall assign a time
7 and place for a hearing upon the same and shall notify the
8 petitioner of the hearing by written notice at least twenty days
9 in advance thereof. The hearing shall be held within ninety days
10 from the date of filing the petition or other written request for
11 hearing unless continued by agreement of the parties or by the
12 tax commissioner for good cause.

13 The hearing shall be informal and shall be conducted in an
14 impartial manner by the tax commissioner or a hearing exam-
15 iner designated by him or her. If the hearing is on a petition for
16 reassessment the burden of proof shall be upon the taxpayer to
17 show the assessment is incorrect and contrary to law, either in
18 whole or in part. If the hearing is on a petition for refund or
19 credit, the petitioner shall also have the burden of proof.

20 After the hearing, the tax commissioner shall, within a
21 reasonable time, give notice in writing of his or her decision.
22 Unless an appeal from the decision of the tax commissioner
23 rendered in any hearing is taken, pursuant to the provisions of
24 section ten of this article, within sixty days after service of the
25 notice, the tax commissioner's decision shall become final and
26 conclusive and not subject to either administrative or judicial
27 review. The amount, if any, due the state under the decision
28 shall be due and payable on the day following the date upon

29 which the decision becomes final. The amount, if any, due the
30 taxpayer under the decision shall be promptly refunded, or the
31 same may be credited pursuant to section fourteen of this
32 article.

33 (b) All petitions which are on the tax commissioner's
34 docket on the thirty-first day of December, two thousand two,
35 for which no administrative hearing has been held, shall be
36 transferred by the tax commissioner to the office of tax appeals
37 no later than the thirty-first day of January, two thousand three;
38 and thereafter, the petition shall, for all purposes except
39 timeliness of filing, be treated as if it had been filed with the
40 office of tax appeals.

41 (c) All petitions which are on the tax commissioner's
42 docket on the thirty-first day of December, two thousand two,
43 for which an administrative hearing has been held prior to that
44 date, shall remain on the tax commissioner's docket and the tax
45 commissioner shall issue an administrative decision no later
46 than the thirty-first day of March, two thousand three.

§11-10-9a. Small claims procedure; disputes involving \$10,000 or less.

1 (a) *In general.* — Notwithstanding the provisions of section
2 nine of this article, if the amount in dispute in any petition for
3 reassessment filed under section eight or in any petition for
4 refund or credit filed under section fourteen does not exceed ten
5 thousand dollars for any one taxable year, then, at the option of
6 the taxpayer and concurred in by the tax commissioner before
7 the hearing of the case, proceedings in the case shall be
8 conducted under this section. The proceedings shall be con-
9 ducted in an informal manner and in accordance with the rules
10 of evidence and rules of procedure as the tax commissioner may
11 prescribe. A decision, together with a brief summary of the
12 reasons therefor shall be issued by the tax commissioner.

13 (1) All small claims petitions which are on the tax commis-
14 sioner's docket on the thirty-first day of December, two
15 thousand two, for which no administrative hearing has been
16 held, shall be transferred by the tax commissioner to the office
17 of tax appeals no later than the thirty-first day of January, two
18 thousand three; and thereafter, the petition shall, for all pur-
19 poses except timeliness of filing, be treated as if it had been
20 filed with the office of tax appeals.

21 (2) All small claims petitions which are on the tax commis-
22 sioner's docket on the thirty-first day of December, two
23 thousand two, for which an administrative hearing has been
24 held prior to that date, shall remain on the tax commissioner's
25 docket and the tax commissioner shall issue an administrative
26 decision no later than the thirty-first day of March, two thou-
27 sand three.

28 (b) *Finality of decision.* — A decision entered in any case
29 in which proceedings are conducted under this section is not
30 subject to review, administrative or judicial, and may not be
31 treated as precedent for any other case.

32 (c) *Discontinuance of proceedings.* — At any time before
33 commencement of the hearing held under this section, the
34 taxpayer may unilaterally withdraw its election made under
35 subsection (a); and at any time before a decision is issued under
36 this section, the taxpayer may request or the tax commissioner,
37 on his or her own motion, may order that further proceedings
38 under this section be discontinued because there are reasonable
39 grounds for believing that the amount in dispute exceeds the
40 amount described in subsection (a) of this section. Upon any
41 discontinuance, or change of election, a hearing shall be held in
42 the same manner as other cases to which section nine of this
43 article applies.

44 (d) *Amount of deficiency in dispute.* — For purposes of this
45 section, the amount in dispute includes tax, additions to tax,
46 additional amounts and penalties. It excludes interest.

§11-10-10. Appeals.

1 (a) *Right of appeal.* —

2 (1) A taxpayer may appeal the administrative decision of
3 the tax commissioner issued under section nine or fourteen of
4 this article, by taking an appeal to the circuit courts of this state
5 within sixty days after being served with notice of the adminis-
6 trative decision.

7 (2) A taxpayer may appeal the administrative decision of
8 the office of tax appeals in accordance with the provisions of
9 section nineteen, article ten-a of this chapter.

10 (b) *Venue.* — The appeal may be taken in the circuit court
11 of any county:

12 (1) Wherein the activity taxed was engaged in; or

13 (2) Wherein the taxpayer resides; or

14 (3) Wherein the will of the decedent was probated or letters
15 of administration granted; or

16 (4) To the circuit court of Kanawha County.

17 (c) *Petition for appeal.* — The appeal proceeding shall be
18 instituted by filing a petition with the circuit court, or the judge
19 thereof in vacation, within the sixty-day period prescribed in
20 subsection (a) of this section. The clerk of the circuit court
21 shall, within ten days after date the petition is filed, serve the
22 tax commissioner with a copy of the same by registered or
23 certified mail. This petition shall be in writing, verified under
24 oath by the taxpayer, or his or her duly authorized agent, having
25 knowledge of the facts, set forth with particularity the items of
26 the administrative decision or the assessment objected to,
27 together with the reasons for the objections.

28 (d) *Appeal bond.* — If the appeal is of any assessment for
29 additional taxes (except a jeopardy assessment for which
30 security in the amount thereof was previously filed with the tax
31 commissioner), then within ninety days after the petition for
32 appeal is filed, or sooner if ordered by the circuit court, the
33 taxpayer shall file with the clerk of the circuit court a cash bond
34 or a corporate surety bond approved by the clerk. The surety
35 must be qualified to do business in this state. These bonds shall
36 be conditioned that the taxpayer shall perform the orders of the
37 court. The penalty of this bond shall be not less than the total
38 amount of tax, additions to tax, penalties and interest for which
39 the taxpayer was found liable in the administrative decision of
40 the tax commissioner. Notwithstanding the foregoing and in
41 lieu of the bond, the tax commissioner, in his or her discretion
42 upon the terms as he or she may prescribe, may upon a suffi-
43 cient showing by the taxpayer, certify to the clerk of the circuit
44 court that the assets of the taxpayer subject to the lien imposed
45 by section twelve of this article, or other indemnification, are
46 adequate to secure performance of the orders of the court:
47 *Provided*, That if the tax commissioner refuses to certify that
48 the assets of the taxpayer or other indemnification are adequate
49 to secure performance of the orders of the court, then the
50 taxpayer may apply to the circuit court for the certification.

51 (e) *Hearing of appeal.* -- The court shall hear the appeal
52 and determine anew all questions submitted to it on appeal from
53 the determination of the tax commissioner. In the appeal a
54 certified copy of the tax commissioner's notice of assessment
55 or amended or supplemental assessment and administrative
56 decision thereon shall be admissible and shall constitute prima
57 facie evidence of the tax due under the provisions of those
58 articles of this chapter to which this article is applicable. The
59 court shall render its decree thereon and a certified copy of the
60 decree shall be filed by the clerk of the court with the tax
61 commissioner who shall then correct the assessment in accor-
62 dance with the decree. An appeal may be taken by the taxpayer

63 or the tax commissioner to the supreme court of appeals of this
64 state.

**§11-10-10a. Commissioner allowed to acquiesce or not acquiesce
in decisions of office of tax appeals or circuit
court.**

1 (a) The commissioner may state and periodically publish
2 the tax division's acquiescence or nonacquiescence to indicate
3 its position on an adverse decision of the office of tax appeals
4 or a circuit court.

5 (b) Acquiescence in a decision means acceptance by the
6 commissioner of the conclusion reached, but does not necessar-
7 ily mean acceptance and approval of any or all of the reasons
8 assigned by the office of tax appeals or circuit court for its
9 conclusion.

10 (c) Nonacquiescence means that the commissioner does not
11 accept one or more of the adverse conclusions reached by the
12 office of tax appeals or the circuit court even though no appeal
13 is taken from the decision. The decision is binding on the
14 commissioner in the case not appealed but is not binding in any
15 other case.

§11-10-14. Overpayments; credits; refunds and limitations.

1 (a) *Refunds of credits of overpayments.* — In the case of
2 overpayment of any tax (or fee), additions to tax, penalties or
3 interest imposed by this article, or any of the other articles of
4 this chapter, or of this code, to which this article is applicable,
5 the tax commissioner shall, subject to the provisions of this
6 article, refund to the taxpayer the amount of the overpayment
7 or, if the taxpayer so elects, apply the same as a credit against
8 the taxpayer's liability for the tax for other periods. The refund
9 or credit shall include any interest due the taxpayer under the
10 provisions of section seventeen of this article.

11 (b) *Refunds or credits of gasoline and special fuel excise*
12 *tax or motor carrier road tax.* — Any person who seeks a
13 refund or credit of gasoline and special fuel excise taxes under
14 the provisions of section ten, eleven or twelve, article fourteen
15 of this chapter, or section nine or eleven, article fourteen-a of
16 this chapter, shall file his or her claim for refund or credit in
17 accordance with the provisions of the applicable sections. The
18 ninety-day time period for determination of claims for refund
19 or credit provided in subsection (d) of this section does not
20 apply to these claims for refund or credit.

21 (c) *Claims for refund or credit.* — No refund or credit shall
22 be made unless the taxpayer has timely filed a claim for refund
23 or credit with the tax commissioner. A person against whom an
24 assessment or administrative decision has become final is not
25 entitled to file a claim for refund or credit with the tax commis-
26 sioner as prescribed herein. The tax commissioner shall
27 determine the taxpayer's claim and notify the taxpayer in
28 writing of his or her determination.

29 (d) *Petition for refund or credit; hearing.* --

30 (1) If the taxpayer is not satisfied with the tax commis-
31 sioner's determination of taxpayer's claim for refund or credit,
32 or if the tax commissioner has not determined the taxpayer's
33 claim within ninety days after the claim was filed, or six
34 months in the case of claims for refund or credit of the taxes
35 imposed by articles twenty-one, twenty-three and twenty-four
36 of this chapter, after the filing thereof, the taxpayer may file,
37 with the tax commissioner, either personally or by certified
38 mail, a petition for refund or credit: *Provided*, That no petition
39 for refund or credit may be filed more than sixty days after the
40 taxpayer is served with notice of denial of taxpayer's claim:
41 *Provided, however*, That after the thirty-first day of December,
42 two thousand two, the taxpayer shall file the petition with the

43 office of tax appeals in accordance with the provisions of
44 section nine, article ten-a of this chapter.

45 (2) The petition for refund or credit shall be in writing,
46 verified under oath by the taxpayer, or by taxpayer's duly
47 authorized agent having knowledge of the facts, and shall set
48 forth with particularity the items of the determination objected
49 to, together with the reasons for the objections.

50 (3) When a petition for refund or credit is properly filed, the
51 procedures for hearing and for decision applicable when a
52 petition for reassessment is timely filed shall be followed.

53 (e) *Appeal.* — An appeal from the tax commissioner's
54 administrative decision upon the petition for refund or credit
55 may be taken by the taxpayer in the same manner and under the
56 same procedure as that provided for judicial review of an
57 administrative decision on a petition for reassessment, but no
58 bond shall be required of the taxpayer. An appeal from the
59 administrative decision of the office of tax appeals on a petition
60 for refund or credit, if taken by the taxpayer, shall be taken as
61 provided in section nineteen, article ten-a of this chapter.

62 (f) *Decision of the court.* — Where the appeal is to review
63 an administrative decision on a petition for refund or credit, the
64 court may determine the legal rights of the parties but in no
65 event shall it enter a judgment for money.

66 (g) *Refund made or credit established.* — The tax commis-
67 sioner shall promptly issue his or her requisition on the treasury
68 or establish a credit, as requested by the taxpayer, for any
69 amount finally administratively or judicially determined to be
70 an overpayment of any tax (or fee) administered under this
71 article. The auditor shall issue his or her warrant on the trea-
72 surer for any refund requisitioned under this subsection payable
73 to the taxpayer entitled to the refund, and the treasurer shall pay

74 the warrant out of the fund into which the amount so refunded
75 was originally paid: *Provided*, That refunds of personal income
76 tax may also be paid out of the fund established pursuant to
77 section ninety-three, article twenty-one of this chapter.

78 (h) *Forms for claim for refund or a credit; where return*
79 *shall constitute claim.* — The tax commissioner may prescribe
80 by rule or regulation the forms for claims for refund or credit.
81 Notwithstanding the foregoing, where the taxpayer has overpaid
82 the tax imposed by article twenty-one, twenty-three or
83 twenty-four of this chapter, a return signed by the taxpayer
84 which shows on its face that an overpayment of tax has been
85 made shall constitute a claim for refund or credit.

86 (i) *Remedy exclusive.* — The procedure provided by this
87 section shall constitute the sole method of obtaining any refund,
88 or credit, or any tax (or fee) administered under this article, it
89 being the intent of the Legislature that the procedure set forth
90 in this article shall be in lieu of any other remedy, including the
91 uniform declaratory judgments act embodied in article thirteen,
92 chapter fifty-five of this code, and the provisions of section
93 two-a, article one of this chapter.

94 (j) *Applicability of this section.* — The provisions of this
95 section shall apply to refunds or credits of any tax (or fee),
96 additions to tax, penalties or interest imposed by this article, or
97 any article of this chapter, or of this code, to which this article
98 is applicable.

99 (k) *Erroneous refund or credit.* — If the tax commissioner
100 believes that an erroneous refund has been made or an errone-
101 ous credit has been established, he or she may proceed to
102 investigate and make an assessment or institute civil action to
103 recover the amount of the refund or credit, within two years
104 from the date the erroneous refund was paid or the erroneous
105 credit was established, except that the assessment may be issued

106 or civil action brought within five years from the date if it
107 appears that any portion of the refund or credit was induced by
108 fraud or misrepresentation of a material fact.

109 (1) *Limitation on claims for refund or credit.* —

110 (1) *General rule.* — Whenever a taxpayer claims to be
111 entitled to a refund or credit of any tax (or fee), additions to tax,
112 penalties or interest imposed by this article, or any article of
113 this chapter, or of this code, administered under this article,
114 paid into the treasury of this state, the taxpayer shall, except as
115 provided in subsection (d) of this section, file a claim for
116 refund, or credit, within three years after the due date of the
117 return in respect of which the tax (or fee) was imposed,
118 determined by including any authorized extension of time for
119 filing the return, or within two years from the date the tax, (or
120 fee), was paid, whichever of the periods expires the later, or if
121 no return was filed by the taxpayer, within two years from the
122 time the tax (or fee) was paid, and not thereafter.

123 (2) *Extensions of time for filing claim by agreement.* — The
124 tax commissioner and the taxpayer may enter into a written
125 agreement to extend the period within which the taxpayer may
126 file a claim for refund or credit, which period may not exceed
127 two years. The period so agreed upon may be extended for
128 additional periods not in excess of two years each by subse-
129 quent agreements in writing made before expiration of the
130 period previously agreed upon.

131 (3) *Special rule where agreement to extend time for making*
132 *an assessment.* — Notwithstanding the provisions of subdivi-
133 sions (1) and (2) of this subsection, if an agreement is made
134 under the provisions of section fifteen of this article extending
135 the time period in which an assessment of tax can be made, then
136 the period for filing a claim for refund or credit for overpay-
137 ment of the same tax made during the periods subject to

138 assessment under the extension agreement shall also be
139 extended for the period of the extension agreement plus ninety
140 days.

141 (4) *Overpayment of federal tax.* — Notwithstanding the
142 provisions of subdivisions (1) and (2) of this subsection, in the
143 event of a final determination by the United States Internal
144 Revenue Service or other competent authority of an overpay-
145 ment in the taxpayer's federal income or estate tax liability, the
146 period of limitation upon claiming a refund reflecting the final
147 determination in taxes imposed by articles eleven, twenty-one
148 and twenty-four of this chapter may not expire until six months
149 after the determination is made by the United States Internal
150 Revenue Service or other competent authority.

151 (5) *Tax paid to the wrong state.* — Notwithstanding the
152 provisions of subdivisions (1) and (2) of this subsection, when
153 an individual, or the fiduciary of an estate, has in good faith
154 erroneously paid personal income tax, estate tax or sales tax, to
155 this state on income or a transaction which was lawfully taxable
156 by another state and, therefore, not taxable by this state, and no
157 dispute exists as to the jurisdiction to which the tax should have
158 been paid, then the time period for filing a claim for refund, or
159 credit, for the tax erroneously paid to this state does not expire
160 until ninety days after the tax is lawfully paid to the other state.

161 (6) *Exception for gasoline and special fuel excise tax and*
162 *motor carrier road tax.* — This subsection does not apply to
163 refunds of gasoline and special fuel excise tax or motor carrier
164 road tax sought under the provisions of article fourteen or
165 fourteen-a of this chapter.

166 (m) *Effective date.* — This section, as amended in the year
167 one thousand nine hundred ninety-six, shall apply to claims for
168 refund or credit filed on or after the first day of July, one
169 thousand nine hundred ninety-six.

§11-10-17. Interest.

1 (a) *Underpayments.* – If any amount of a tax administered
2 under this article is not paid on or before the last date pre-
3 scribed for payment, interest on the amount at the rate of eight
4 percent per annum shall be paid for the period from the last date
5 to the date paid: *Provided*, That on and after the first day of
6 July, one thousand nine hundred eighty-six, interest on under
7 payments shall be paid at the annual rate established under
8 section seventeen-a of this article, from the period beginning on
9 the first day of July, or from the last day prescribed for pay-
10 ment, whichever is the later, to the date paid, regardless of
11 when liability for the tax arose: *Provided, however*, That on and
12 after the first day of July, two thousand two, interest on
13 underpayments shall be paid at an annual rate of one and one-
14 half percent above the annual rate established under section
15 seventeen-a of this article, from the period beginning on the
16 first day of July, or from the last day prescribed for payment,
17 whichever is the later, to the date paid, regardless of when
18 liability for the tax arose. For purposes of this subsection, the
19 last date prescribed for payment shall be the due date of the
20 return and shall be determined without regard to any extension
21 of time for payment.

22 (b) *Last date for payment not otherwise prescribed.* — In
23 the case of taxes payable by stamp or other indicia of tax
24 payment and in all other cases in which the last day for payment
25 is not otherwise prescribed, the last date for payment shall be
26 considered to be the date the liability for tax arises and in no
27 event shall be later than the date notice and demand for
28 payment of the tax is made by the tax commissioner.

29 (c) *Erroneous refund or credit.* — If any refund is made or
30 credit is established upon an erroneous claim for refund or
31 credit, interest on the amount refunded or credited at the annual
32 rate established under section seventeen-a of this article, shall

33 be paid by the claimant from the date the refund was made or
34 the credit was taken to the date the amount is recovered.

35 (d) *Overpayments.* — Interest shall be allowed and paid at
36 the annual rate of eight percent per annum upon any amount
37 which has been finally administratively or judicially determined
38 to be an overpayment in respect of each tax administered under
39 this article except the taxes imposed by articles twelve, fourteen
40 and fourteen-a of this chapter: *Provided*, That on and after the
41 first day of July, one thousand nine hundred eighty-six, interest
42 on overpayments shall be paid at the annual rate established
43 under section seventeen-a of this article, from the first day of
44 July, or the date the claim for refund or credit is filed, which-
45 ever is the later, regardless of when the tax was paid. The
46 interest shall be allowed and paid for the period commencing
47 with the date of the filing by the taxpayer of a claim for refund
48 or credit with the tax commissioner and ending with the date of
49 a final administrative or judicial determination of overpayment.
50 The tax commissioner shall, within thirty days after the
51 determination of entitlement to refund, issue his or her requisition
52 or establish a credit as requested by the taxpayer. When-
53 ever the tax commissioner fails or refuses to issue any requisition
54 or establish the credit within said thirty-day period, the
55 interest provided herein shall commence to accrue until
56 performance by the tax commissioner. The acceptance of the
57 refund check or credit shall be without prejudice to any right of
58 the taxpayer to claim any additional overpayment and interest
59 thereon.

60 (e) *Applicable rules.* — For purposes of this section:

61 (1) *No interest payable on tax refunded or credited within*
62 *ninety days after claim for refund or credit is filed.* — In the
63 event of the overpayment of any tax administered under this
64 article, except the tax imposed by articles twenty-one and
65 twenty-four of this chapter, where the tax commissioner issues

66 his or her requisition or establishes a credit as requested by the
67 taxpayer within ninety days after the date of the filing by the
68 taxpayer of a claim for refund or credit, no interest shall be
69 allowed under this section.

70 (2) *No interest payable where personal income tax and*
71 *corporation net income tax refunded or credited within six*
72 *months after claim for refund or credit is filed.* — In the event
73 of the overpayment of the tax imposed by articles twenty-one
74 and twenty-four of this chapter, where the tax commissioner
75 issues his or her requisition or establishes a credit as requested
76 by the taxpayer within six months after the date of the filing by
77 the taxpayer of a claim for refund or credit, no interest shall be
78 allowed under this section.

79 (3) *Interest treated as tax.* — Interest prescribed under this
80 section on any tax shall be collected and paid in the same
81 manner as taxes.

82 (4) *No interest on interest.* — No interest under this section
83 shall be imposed on the interest provided by this section prior
84 to the first day of July, one thousand nine hundred eighty-six.

85 (5) *Interest on penalties or additions to tax.* — Interest shall
86 be imposed under subsection (a) of this section on any
87 assessable penalty or additions to tax only if the penalty or
88 additions to tax is not paid within fifteen days from the date of
89 notice and demand therefor, and in that case, interest shall be
90 imposed only for the period from the date of the notice and
91 demand to the date of payment.

92 (6) *Payments made within fifteen days after notice and*
93 *demand.* — If notice and demand is made for payment of any
94 amount, and if the amount is paid within fifteen days after the
95 date of the notice and demand, interest under this section on the

96 amount so paid may not be imposed for the period after the date
97 of the notice and demand.

98 (7) *Limitation on collection.* — Interest prescribed under
99 this section on any tax may be collected at any time during the
100 period within which the tax to which the interest relates may be
101 collected.

102 (8) *Exception as to estimated tax.* — This section does not
103 apply to any failure to pay any estimated tax required to be paid
104 under articles thirteen, thirteen-a, thirteen-b, twenty-one,
105 twenty-three or twenty-four of this chapter.

§11-10-23. Alternative dispute resolution of tax disputes.

1 On or before the thirty-first day of December, two thou-
2 sand two, the tax commissioner shall propose rules for legisla-
3 tive approval in accordance with the provisions of article three,
4 chapter twenty-nine-a of this code which adopt and implement
5 alternative dispute resolution mechanisms which offer taxpay-
6 ers voluntary and cost-effective methods of resolving tax
7 disputes in order to encourage voluntary settlements and
8 minimize the number of disputes that require litigation to
9 resolve the controversy.

**§11-10-24. Commissioner to review taxpayer problem resolution
procedures; report to Legislature.**

1 The commissioner shall review the procedures utilized to
2 resolve taxpayer complaints and problems to determine whether
3 taxpayer complaints and problems are being remedied promptly
4 and to assure that taxpayer rights are safeguarded and protected
5 during tax determination and collection processes. The commis-
6 sioner shall, on or before the first day of October, two thousand
7 four, report the findings of the review to the joint committee on
8 government and finance with recommendations on the need for
9 legislation to implement a taxpayer resolution program.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-1. Legislative finding; purpose.

1 The Legislature finds that there is a need for an independent
2 quasi-judicial agency separate and apart from the tax division
3 to resolve disputes between the tax commissioner and taxpayers
4 in order to maintain public confidence in the state tax system.
5 The Legislature does therefore declare that the purpose of this
6 article is to create the West Virginia office of tax appeals to
7 resolve disputes between the tax commissioner and taxpayers
8 and to prescribe the powers and duties of the office of tax
9 appeals.

§11-10A-2. Definitions.

1 (a) “Division” means the tax division of the West Virginia
2 department of tax and revenue.

3 (b) “Tax commissioner” or “commissioner” means the tax
4 commissioner of the state of West Virginia or his or her
5 authorized designee.

6 (c) “Office of tax appeals” means the West Virginia office
7 of tax appeals created by this article.

§11-10A-3. Office of tax appeals created.

1 There is hereby created the West Virginia office of tax
2 appeals, a quasi-judicial agency which, for administrative
3 purposes only, is in the department of tax and revenue.

**§11-10A-4. Principal office; place for hearings; county commis-
sion to provide facilities.**

1 The principal office shall be at the state capital, but the
2 office of tax appeals may hold hearings at any place within this
3 state. A county commission, upon request by the office of tax

4 appeals, shall provide it with suitable rooms and facilities for
5 hearings it holds in that county at times convenient to the
6 county commission and the office of tax appeals.

§11-10A-5. Seal; authenticating records; judicial notice.

1 The office of tax appeals shall have a seal. The seal shall
2 have the following words engraved thereon: "West Virginia
3 Office of Tax Appeals." The office of tax appeals shall authen-
4 ticate all of its orders, records and proceedings with the seal;
5 and the courts of this state shall take judicial notice of the seal.

**§11-10A-6. Chief administrative law judge; appointment, term
and vacancy; qualifications; compensation;
conflicts of interest prohibited; removal.**

1 (a) The governor, with the advice and consent of the Senate,
2 shall appoint the chief administrative law judge from a list of
3 three qualified nominees submitted to the governor by the board
4 of governors of the West Virginia state bar for a six-year term.
5 An appointment to fill a vacancy in the position shall be for the
6 unexpired term.

7 (b) Prior to appointment, the chief administrative law judge
8 shall be a citizen of the United States and a resident of this state
9 who is admitted to the practice of law in this state and who has
10 five years of full-time or equivalent part-time experience as an
11 attorney with federal or state tax law expertise or as a judge of
12 a court of record.

13 (c) The salary of the chief administrative law judge shall be
14 set by the secretary of the department of tax and revenue
15 created in section two, article one, chapter five-f of this code.
16 The salary shall be within the salary range for comparable chief
17 administrative law judges as determined by the state personnel
18 board created by section six, article six, chapter twenty-nine of
19 this code.

20 (d) The chief administrative law judge, during his or her
21 term shall:

22 (1) Devote his or her full time to the duties of the position;

23 (2) Not otherwise engage in the active practice of law or be
24 associated with any group or entity which is itself engaged in
25 the active practice of law: *Provided*, That nothing in this
26 paragraph may be construed to prohibit the chief administrative
27 law judge from being a member of a national, state or local bar
28 association or committee, or of any other similar type group or
29 organization, or to prohibit the chief administrative law judge
30 from engaging in the practice of law by representing himself,
31 herself or his or her immediate family in their personal affairs
32 in matters not subject to this article.

33 (3) Not engage directly or indirectly in any activity,
34 occupation or business interfering or inconsistent with his or
35 her duties as chief administrative law judge;

36 (4) Not hold any other appointed public office or any
37 elected public office or any other position of public trust; and

38 (5) Not be a candidate for any elected public office, or
39 serve on or under any committee of any political party.

40 (e) The governor may remove the chief administrative law
41 judge only for incompetence, neglect of duty, official miscon-
42 duct or violation of subsection (d) of this section, and removal
43 shall be in the same manner as that specified for removal of
44 elected state officials in section six, article six, chapter six of
45 this code.

**§11-10A-7. Powers and duties of chief administrative law judge;
all employees, except chief administrative law
judge members of classified service; qualifications
of administrative law judges; closure of tax divi-**

sion office of hearings and appeals and transfer of employees to office of tax appeals.

1 (a) The chief administrative law judge is the chief executive
2 officer of the office of tax appeals and he or she may employ up
3 to two administrative law judges, no more than one person to
4 serve as executive director, no more than one staff attorney and
5 other clerical personnel as necessary for the proper administra-
6 tion of this article. The chief administrative law judge may
7 delegate administrative duties to other employees, but the chief
8 administrative law judge shall be responsible for all official
9 delegated acts.

10 (1) All employees of the office of tax appeals, except the
11 chief administrative law judge, shall be in the classified service
12 and shall be governed by the provisions of the statutes, rules
13 and policies of the classified service in accordance with the
14 provisions of article six, chapter twenty-nine of this code.

15 (2) Prior to employment by the office of tax appeals, all
16 administrative law judges shall be admitted to the practice of
17 law in this state and have at least two years of full-time or
18 equivalent part-time experience as an attorney with federal or
19 state tax law expertise.

20 (3) The chief administrative law judge and all administra-
21 tive law judges shall be members of the public employees
22 retirement system and do not qualify as participants in the
23 judicial retirement system during their tenure with the office of
24 tax appeals.

25 (4) Notwithstanding any provisions of this code to the
26 contrary, the chief administrative law judge shall employ any
27 person not a temporary or probationary employee employed
28 full-time and in good standing by the tax division in its hearings
29 office applying for a position with the office of tax appeals. A
30 former tax division employee employed by the office of tax

31 appeals under the provisions of this subdivision shall retain his
32 or her classified service classification, salary and benefits:
33 *Provided*, That if an employee is currently classified as a chief
34 administrative law judge, he or she may not retain that classifi-
35 cation and must be reclassified as determined by the secretary
36 of the department of tax and revenue.

37 (b) The chief administrative law judge shall:

38 (1) Direct and supervise the work of the legal staff;

39 (2) Make hearing assignments;

40 (3) Maintain the records of the office of tax appeals;

41 (4) Review and approve decisions of administrative law
42 judges as to legal accuracy, clarity and other requirements;

43 (5) Publish decisions in accordance with the provisions of
44 section sixteen of this article;

45 (6) Submit to the Legislature, on or before the fifteenth day
46 of February, an annual report summarizing the office of tax
47 appeals's activities since the end of the last report period,
48 including a statement of the number and type of matters
49 handled by the office of tax appeals during the preceding fiscal
50 year and the number of matters pending at the end of the year;
51 and

52 (7) Perform the other duties necessary and proper to carry
53 out the purposes of this article.

§11-10A-8. Jurisdiction of office of tax appeals.

1 The office of tax appeals has exclusive and original
2 jurisdiction to hear and determine all:

- 3 (1) Appeals from tax assessments issued by the tax com-
4 missioner pursuant to article ten of this chapter;
- 5 (2) Appeals from decisions or orders of the tax commis-
6 sioner denying refunds or credits for all taxes administered in
7 accordance with the provisions of article ten of this chapter;
- 8 (3) Appeals from orders of the tax commissioner denying,
9 suspending, revoking, refusing to renew any license or impos-
10 ing any civil money penalty for violating the provisions of any
11 licensing law administered by the tax commissioner;
- 12 (4) Questions presented when a hearing is requested
13 pursuant to the provisions of any article of this chapter which
14 is administered by the provisions of article ten of this chapter;
- 15 (5) Matters which the tax division is required by statute or
16 legislatively approved rules to hear, except employee griev-
17 ances filed pursuant to article six-a, chapter twenty-nine of this
18 code; and
- 19 (6) Other matters which may be conferred on the office of
20 tax appeals by statute or legislatively approved rules.

§11-10A-9. Appeal to office of tax appeals; petition; answer.

- 1 (a) A proceeding before the office of tax appeals appealing
2 a tax assessment, a denial of a tax refund or credit or any other
3 order of the tax commissioner, or requesting a hearing pursuant
4 to the provisions of any article of this chapter which is adminis-
5 tered pursuant to article ten of this chapter, shall be initiated by
6 a person timely filing a written petition that succinctly states:
 - 7 (1) The nature of the case;
 - 8 (2) The facts on which the appeal is based; and

9 (3) Each question presented for review by the office of tax
10 appeals.

11 (b) A petition filed pursuant to subsection (a) of this section
12 is timely filed if postmarked or hand delivered to the office of
13 tax appeals within sixty days of the date a person received
14 written notice of an assessment, denial of a refund or credit,
15 order or other decision of the tax commissioner.

16 (c) The office of tax appeals shall, within five days of
17 receipt of a timely petition filed pursuant to subsection (a) of
18 this article, provide the tax commissioner with a copy of the
19 petition. The tax commissioner shall submit a written answer to
20 the petition within forty days of his or her receipt of the
21 petition. The answer shall succinctly state:

22 (1) The nature of the case;

23 (2) The facts relied upon by the commissioner;

24 (3) An answer to each question presented for review.

25 (d) A proceeding before the office of tax appeals in other
26 matters conferred by statute or legislatively approved rules shall
27 be initiated by filing a petition with the office of tax appeals in
28 accordance with the provisions of the applicable statute or rule.

§11-10A-10. Hearing procedures.

1 (a) The office of tax appeals shall assign a date, time and
2 place for a hearing on a petition and shall notify the parties to
3 the hearing by written notice at least twenty days in advance of
4 the hearing date. The hearing shall be held within forty-five
5 days of the due date of the commissioner's answer unless
6 continued by order of the office of tax appeals for good cause.

7 (b) A hearing before the office of tax appeals shall be heard
8 *de novo* and conducted pursuant to the provisions of the
9 contested case procedure set forth in article five, chapter
10 twenty-nine-a of this code to the extent not inconsistent with the
11 provisions of this article. In case of conflict, the provisions of
12 this article shall govern. The provisions of section five, article
13 five, chapter twenty-nine-a of this code are not applicable to a
14 hearing before the office of tax appeals.

15 (c) The office of tax appeals is not bound by the rules of
16 evidence as applied in civil cases in the circuit courts of this
17 state. The office of tax appeals may admit and give probative
18 effect to evidence of a type commonly relied upon by a
19 reasonably prudent person in the conduct of his or her affairs.

20 (d) All testimony shall be given under oath.

21 (e) Except as otherwise provided by this code or legislative
22 rules, the taxpayer or petitioner has the burden of proof.

23 (f) The administrative law judge may ask for proposed
24 findings of fact and conclusions of law from the parties prior to
25 the issuance by the office of tax appeals of the decision in the
26 matter.

27 (g) Hearings shall be exempt from the requirements of
28 article nine-a, chapter six and article one, chapter twenty-nine-b
29 of this code.

§11-10A-11. Small claims hearing.

1 (a) If the amount in dispute in any petition filed with the
2 office of tax appeals does not exceed ten thousand dollars for
3 any one taxable year, then, at the option of the taxpayer and
4 with the concurrence of the office of tax appeals, the hearing
5 shall be conducted under this section. Notwithstanding the
6 provisions of section fourteen of this article, a hearing under

7 this section shall be conducted in an informal manner and in
8 accordance with the rules of practice and procedure as the
9 office of tax appeals may prescribe.

10 (b) At any time before commencement of the hearing held
11 under this section, the petitioner may unilaterally withdraw the
12 election made under subsection (a) of this section. Upon a
13 change of election, a hearing shall be held in the same manner
14 as other contested matters to which this article applies.

15 (c) A decision entered in any hearing conducted under this
16 section is not subject to administrative or judicial review under
17 this article, article ten of this chapter or article five, chapter
18 twenty-nine-a of this code, and may not be treated as precedent
19 for any other contested matter. The amount, if any, owed by the
20 taxpayer to the state shall be paid within thirty days after notice
21 of the decision is served on the taxpayer. The amount, if any, of
22 overpayment by the taxpayer shall be promptly refunded or
23 credited to the taxpayer.

24 (d) For purposes of this section, the amount in dispute
25 includes tax, additions to tax and penalties, but excludes
26 interest.

§11-10A-12. Powers of the office of tax appeals.

1 In determining the outcome of a case, the office of tax
2 appeals may affirm, reverse, modify or vacate an assessment of
3 tax; may order the payment of or deny a refund, in whole or
4 part; may authorize or deny a credit, in whole or part; or may
5 grant other relief necessary or appropriate to dispose of the
6 matter.

**§11-10A-13. Subpoenas; service; cost; fees; relief; disobedience;
oath.**

1 (a) The office of tax appeals has the power to issue subpoe-
2 nas and subpoenas duces tecum requiring the attendance of
3 witnesses and the production of books, papers, records, docu-

4 ments and testimony at the time and place specified. The office
5 of tax appeals may exercise the power upon the request of any
6 person who is a party to a hearing before the office of tax
7 appeals.

8 (b) Every subpoena and subpoena duces tecum must be
9 served at least five days before the return date thereof, by either
10 personal service made by any person over eighteen years of age,
11 or by registered or certified mail, but a return receipt signed by
12 the person to whom subpoena or subpoena duces tecum is
13 directed shall be required to prove service by registered or
14 certified mail. Any party requesting a subpoena or subpoena
15 duces tecum is responsible for service thereof and payment of
16 any fee for service. Any person who serves any subpoena or
17 subpoena duces tecum shall be entitled to the same fee as
18 sheriffs who serve witness subpoenas for the circuit courts of
19 this state.

20 (c) Fees for the attendance of witnesses subpoenaed shall be
21 the same as for witnesses before the circuit courts of this state.
22 All fees related to any subpoena or subpoena duces tecum
23 issued at the request of a party to an administrative hearing
24 shall be paid by the party who requested the subpoena or
25 subpoena duces tecum be issued. All requests by parties for
26 issuance of subpoena or subpoena duces tecum shall be in
27 writing and shall contain a statement acknowledging that the
28 requesting party agrees to pay the fees.

29 (d) Upon motion made promptly, and in any event before
30 the time specified in a subpoena or subpoena duces tecum for
31 compliance therewith, the circuit court of the county in which
32 the hearing is to be held or the circuit court of the county in
33 which the person upon whom any subpoena or subpoena duces
34 tecum was served resides, has his, her or its principal place of
35 business or is employed, or the circuit court of the county in
36 which any subpoena or subpoena duces tecum was served, or

37 the judge of any circuit court in vacation, may grant any relief
38 with respect to the subpoena or subpoena duces tecum which
39 any circuit court, under the West Virginia rules of civil proce-
40 dure, could grant, and for any of the same reasons, with respect
41 to any subpoena or subpoena duces tecum issued from any
42 circuit court.

43 (e) In case of disobedience to or neglect of any subpoena or
44 subpoena duces tecum served on any person, or the refusal of
45 any witness to testify to any matter regarding which he or she
46 may be lawfully interrogated, the circuit court of the county in
47 which the hearing is being held, or the circuit court of Kanawha
48 County or of the county in which the person resides, has his, her
49 or its principal place of business or is employed, or the judge
50 thereof in vacation, upon application of the chief administrative
51 law judge of the office of tax appeals, may compel obedience
52 by attachment proceedings for contempt as in the case of
53 disobedience of the requirements of a subpoena or subpoena
54 duces tecum issued from the circuit court for a refusal to testify
55 therein.

56 (f) Witnesses subpoenaed under this section shall testify
57 under oath or affirmation.

**§11-10A-14. Recording hearings; notice; record; transcripts;
costs.**

1 (a) Except in the small claims division, all hearings before
2 the office of tax appeals shall be recorded by means acceptable
3 for use in courts of this state. All parties shall receive notice
4 that the hearing will be recorded and that each is entitled to
5 receive a copy of the recording at cost.

6 (b) A copy of the written exhibits made part of the record
7 shall be available to any party upon request and payment of a
8 reasonable fee.

9 (c) Upon appeal to circuit court, a verbatim transcript and
10 copy of written exhibits shall be prepared for submission to the
11 circuit court with the cost paid by the party taking the appeal:
12 *Provided*, That if both parties appeal, the cost of the transcript
13 shall be shared equally by the two parties.

§11-10A-15. Appearances before the office of tax appeals.

1 (a) A person may appear before the office of tax appeals in
2 his or her own behalf, or may be represented by an attorney or
3 by any other person as he or she may choose.

4 (b) Nothing in this section may be construed to permit the
5 unauthorized practice of law as defined by the West Virginia
6 supreme court of appeals.

**§11-10A-16. Decisions and orders of the office of tax appeals;
publication.**

1 (a) Every final decision or order of the office of tax appeals
2 shall be in writing and shall include a concise statement of the
3 material facts and conclusions of law.

4 (b) All final decisions or orders of the office of tax appeals
5 shall be issued within a reasonable time, not to exceed six
6 months, from the date the petition is filed or from the date the
7 hearing record is closed, whichever is later.

8 (c) All final decisions and orders, except small claims
9 decisions, shall be published in the state register after having
10 been redacted to maintain confidentiality. The office of tax
11 appeals may also post its redacted decisions on the internet.

§11-10A-17. Service of notice of final decisions and orders.

1 (a) Notice of final decisions and orders of the office of tax
2 appeals shall be served upon the parties either by personal or
3 substituted service, or by certified mail.

4 (1) Service of notice by personal or substituted service is
5 valid if made by any method authorized by the rules of the West
6 Virginia rules of civil procedure.

7 (2) Service of notice by certified mail is valid if accepted
8 by the party, or if addressed to and mailed to the party's usual
9 place of business or usual place of abode or last known address
10 and accepted by any person.

11 (b) Any notice addressed and mailed in the manner speci-
12 fied in subsection (a), which is refused or not claimed, may then
13 be served by first-class mail, postage prepaid, to the same
14 address and the date of posting in the United States mail is the
15 date of service.

**§11-10A-18. Finality of decision by the office of tax appeals;
amount due payable; prompt refunds.**

1 Unless an appeal from the decision of the office of tax
2 appeals is taken pursuant to section nineteen of this article,
3 within sixty days after service of notice of the decision, the
4 office of tax appeals's decision shall become final and conclu-
5 sive and not subject to either administrative or judicial review.
6 The amount, if any, owed by the taxpayer shall be due and
7 payable to the tax commissioner on the day following the date
8 upon which the decision became final. The amount of overpay-
9 ment by the taxpayer, if any, shall be promptly refunded or
10 credited to the taxpayer.

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

1 (a) Either the taxpayer or the commissioner, or both, may
2 appeal the final decision or order of the office of tax appeals by
3 taking an appeal to the circuit courts of this state within sixty
4 days after being served with notice of the final decision or
5 order.

6 (b) The office of tax appeals may not be made a party in
7 any judicial review of a decision or order it issued.

8 (c)(1) If the taxpayer appeals, the appeal may be taken in
9 the circuit court of Kanawha County or any county:

10 (A) Wherein the activity sought to be taxed was engaged in;

11 (B) Wherein the taxpayer resides; or

12 (C) Wherein the will of the decedent was probated or letters
13 of administration granted.

14 (2) If the tax commissioner appeals, the appeal may be
15 taken in Kanawha County: *Provided*, That the taxpayer shall
16 have the right to remove the appeal to the county:

17 (A) Wherein the activity sought to be taxed was engaged in;

18 (B) Wherein the taxpayer resides; or

19 (C) Wherein the will of the decedent was probated or letters
20 of administration granted.

21 (3) In the event both parties appeal to different circuit
22 courts, the appeals shall be consolidated. In the absence of
23 agreement by the parties, the appeal shall be consolidated in the
24 circuit court of the county in which the taxpayer filed the
25 petition for appeal.

26 (d) The appeal proceeding shall be instituted by filing a
27 petition for appeal with the circuit court, or the judge thereof in
28 vacation, within the sixty-day period prescribed in subsection
29 (a) of this section. A copy of the petition for appeal shall be
30 served on all parties appearing of record, other than the party
31 appealing, by registered or certified mail. The petition for
32 appeal shall state whether the appeal is taken on questions of
33 law or questions of fact, or both, and set forth with particularity

34 the items of the decision objected to, together with the reasons
35 for the objections.

36 (e) If the appeal is of an assessment, except a jeopardy
37 assessment for which security in the amount thereof was
38 previously filed with the tax commissioner, then within ninety
39 days after the petition for appeal is filed, or sooner if ordered by
40 the circuit court, the petitioner shall file with the clerk of the
41 circuit court a cash bond or a corporate surety bond approved
42 by the clerk. The surety must be qualified to do business in this
43 state. These bonds shall be conditioned upon the petitioner
44 performing the orders of the court. The penalty of this bond
45 shall be not less than the total amount of tax or revenue plus
46 additions to tax, penalties and interest for which the taxpayer
47 was found liable in the administrative decision of the office of
48 tax appeals. Notwithstanding the foregoing and in lieu of the
49 bond, the tax commissioner, upon application of the petitioner,
50 may upon a sufficient showing by the taxpayer, certify to the
51 clerk of the circuit court that the assets of the taxpayer are
52 adequate to secure performance of the orders of the court:
53 *Provided*, That if the tax commissioner refuses to certify that
54 the assets of the taxpayer or other indemnification are adequate
55 to secure performance of the orders of the court, then the
56 taxpayer may apply to the circuit court for the certification. No
57 bond may be required of the tax commissioner.

58 (f) The circuit court shall hear the appeal as provided in
59 section four, article five, chapter twenty-nine-a of this code:
60 *Provided*, That when the appeal is to review a decision or order
61 on a petition for refund or credit, the court may determine the
62 legal rights of the parties, but in no event shall it enter a
63 judgment for money.

64 (g) Unless the tax commissioner appeals an adverse court
65 decision, the commissioner, upon receipt of the certified order
66 of the court, shall promptly correct his or her assessment or

67 issue his or her requisition on the treasury or establish a credit
68 for the amount of an overpayment.

69 (h) Either party may appeal to the supreme court of appeals
70 as provided in article six, chapter twenty-nine-a of this code.

§11-10A-20. Rules required.

1 The office of tax appeals shall adopt rules of practice and
2 procedure in accordance with the provisions of article three,
3 chapter twenty-nine-a of this code no later than the thirty-first
4 day of March, two thousand three.

§11-10A-21. Timely filing.

1 (a) Any petition, statement or other document required to
2 be filed within a prescribed period or on or before a prescribed
3 date under authority of this article is timely filed if it is deliv-
4 ered in person on or before the date to the office of tax appeals
5 at its office during normal business hours.

6 (b) Any petition, statement or other document required to
7 be filed within a prescribed period or on or before a prescribed
8 date under authority of this article that is delivered by the
9 United States mail to the office of tax appeals is timely filed if
10 the date of the United States postmark stamped on the envelope
11 is within the prescribed period or on or before the prescribed
12 date for filing, and the envelope was deposited in the United
13 States mail, postage prepaid and properly addressed to the
14 office of tax appeals.

15 (c) The last date for timely filing includes any extension of
16 time authorized by law or rule and any extension of time
17 granted in writing by the office of tax appeals.

§11-10A-22. Time for performance of acts where last day falls on Saturday, Sunday or legal holiday.

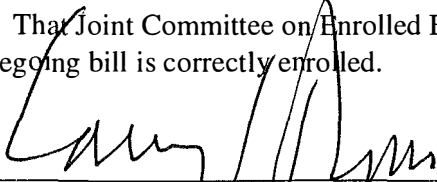
1 When the last day prescribed under authority of this article
2 for performing any act falls on Saturday, Sunday or a legal
3 holiday, the performance of the act is considered timely if it is
4 performed on the next succeeding day which is not a Saturday,
5 Sunday or a legal holiday. For purposes of this section, the last
6 day for the performance of any act shall be determined by
7 including any authorized extension of time. The term “legal
8 holiday” means a legal holiday in this state.

§11-10A-23. Confidentiality.

1 The provisions of section five-d, article ten of this chapter,
2 to the extent not inconsistent with the provisions of this article,
3 are applicable to all employees of the office of tax appeals.

Enr. Com. Sub. for H. B. 4305] 38

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

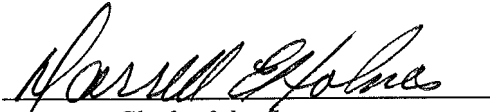
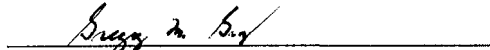
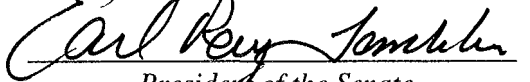


Chairman Senate Committee


Chairman House Committee

Originating in the House.

In effect ninety days from passage.


Clerk of the Senate
Clerk of the House of Delegates
President of the Senate
Speaker of the House of Delegates

The within is approved this the 20th
day of March, 2002.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/15/02

Time 5:10 pm