

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2496**

BY DELEGATES HOUSEHOLDER, GRAVES, CRISS, ROWE,

STORCH, GEARHEART AND L. PACK

[Introduced February 15, 2021; referred to the

Committee on Finance then the Judiciary]



1 A BILL to repeal §11-3-24b and §11-3-25 of the Code of West Virginia, 1931, as amended; and  
2 to amend and reenact §11-3-15c, §11-3-15f, §11-3-15h, §11-3-15i, §11-3-23, §11-3-23a,  
3 §11-3-24, §11-3-24a, §11-3-25a, and §11-3-32 of said code; and to amend and reenact  
4 §11-10A-1, §11-10A-7, §11-10A-8, §11-10A-10, and §11-10A-19 of said code, all  
5 generally relating to assessments and appellate rights of property owners concerning  
6 valuation, classification, and taxability of real estate and personal property taxation;  
7 providing that residential property owners may not be required to furnish a formal appraisal  
8 to establish the value of their primary residence; providing that an assessor's review is to  
9 be an informal process and defining the standard of proof which a taxpayer must meet to  
10 be no greater than a preponderance of the evidence; expanding the jurisdiction of the  
11 Office of Tax Appeals to include property tax valuation, classification, and taxability;  
12 providing that if an assessor rejects a petition, the petitioner may appeal to the county  
13 Board of Equalization and Review or the Office of Tax Appeals; allowing for certain  
14 appeals from decisions of the Tax Commissioner and Board of Equalization and Review  
15 to the Office of Tax Appeals; repealing and eliminating the Board of Assessment Appeals;  
16 providing for an increase in the number of administrative law judges and staff attorneys  
17 within the Office of Tax Appeals; providing for an effective date; and making technical  
18 changes.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 3. ASSESSMENTS GENERALLY.**

**§11-3-15c. Petition for assessor review of improper valuation of real property.**

1 (a) A taxpayer who is of the opinion that his or her real property has been valued too high  
2 or otherwise improperly valued or listed in the notice given as provided in section two-a of this  
3 article may, but is not required to, file a petition for review with the assessor on a written form  
4 prescribed by the Tax Commissioner. This section shall not apply to industrial and natural  
5 resource property appraised by the Tax Commissioner.

6 (b) The petition shall state the taxpayer's opinion of the true and actual value of the  
7 property and substantial information that justifies that opinion of value for the assessor to consider  
8 for purposes of basing a change in classification or correction of the valuation. For purposes of  
9 this subsection, the taxpayer shall provide substantial information to justify the opinion of value.  
10 Owners of residential property used as the owner's primary residence may, but shall not be  
11 required, to furnish a formal appraisal of the property stating its true and actual value for its current  
12 use. by stating A formal appraisal furnished by a taxpayer shall state the method or methods of  
13 valuation on which the opinion is based:

14 (1) Under the income approach, including the information required in section fifteen-e of  
15 this article;

16 (2) Under the market approach, including the true and actual value of at least three  
17 comparable properties in the same geographic area or the sale of the subject property; or

18 (3) Under the cost approach, including the replacement cost or the cost to build or rebuild  
19 the property, plus the true and actual value of the land.

20 (c) The petition may include more than one parcel of property if they are part of the same  
21 economic unit according to the Tax Commissioner's guidelines or if they are owned by the same  
22 owner, have the same use, are appealed on the same basis and are located in the same tax  
23 district or in contiguous tax districts of the county, and are in a form prescribed by the Tax  
24 Commissioner.

25 (d) The petition shall be filed within eight business days after the date the taxpayer  
26 receives the notice of increased assessment under section two-a of this article or the notice of  
27 increased value was published as a Class II-0 legal advertisement as provided in that section.  
28 For purposes of this section, 'business day' means any day other than Saturday, Sunday or any  
29 legal holiday set forth in section one, article two, chapter two of this code.

**§11-3-15f. Rejection of petition; ~~for failure to include substantial information~~ amended petition; appeal options.**

1 If the assessor rejects a petition filed pursuant to ~~section fifteen-c, fifteen-d or fifteen-e~~  
2 §11-3-15c, §11-3-15d, or §11-3-15e of this article code, the petitioner may appeal to the county  
3 board of equalization and review as provided in section twenty-four of this article or the Office of  
4 Tax Appeals.

**§11-3-15h. Ruling on petition.**

1 (a) In all cases the assessor shall consider the petition and shall rule on each petition filed  
2 pursuant to ~~section fifteen-c, fifteen-d or fifteen-e~~ §11-3-15c, §11-3-15d, or §11-3-15e of this  
3 article code by February 10 of the assessment year. Written notice shall be served by regular mail  
4 on the person who filed the petition.

5 (b) In considering a petition filed pursuant to ~~section fifteen-c, fifteen-d or fifteen-e~~ §11-3-  
6 15c, §11-3-15d, or §11-3-15e of this article code, the assessor shall consider the valuation fixed  
7 by the assessor on other similar property that is similarly situated.

8 (c) The consideration of a petition for review with the assessor is to be an informal process.  
9 Formal rules of evidence shall not be required; the assessor may consider all evidence presented  
10 and may give each item the weight in his or her opinion it commands.

11 (d) The standard of proof which a taxpayer must meet to defend his or her opinion of the  
12 true and actual value of the subject property during reviews by the assessor shall be no greater  
13 than a simple preponderance of the evidence standard.

**§11-3-15i. Petitioner's right to appeal.**

1 (a) If the assessor grants the requested relief, the petitioner may not appeal the ruling of  
2 the assessor.

3 (b) If the petitioner and the assessor reach an agreement within five business days after  
4 the conclusion of the meeting held as provided in ~~section fifteen-g~~ §11-3-15g of this article code,  
5 both parties shall sign the agreement and both parties waive the right to further appeal.

6 (c) If all or part of the petitioner's request under ~~section fifteen-c, fifteen-d or fifteen-e~~ §11-  
7 3-15c, §11-3-15d, or §11-3-15e of this ~~article~~ code is denied, the assessor shall mail, on the date  
8 of the ruling, to the petitioner at the address shown on the petition notice of the grounds of the  
9 refusal to make the change or changes requested in the petition. A petitioner whose request is  
10 denied, in whole or in part, or a petitioner who does not receive a response from the assessor by  
11 February 10, as provided in ~~section fifteen-h~~ §11-3-15h of this ~~article~~ code, may file a protest with  
12 the county commission sitting as a board of equalization and review, as provided in section 24 of  
13 this article or the Office of Tax Appeals.

**§11-3-23. Alterations in property books.**

1 After the copies of the landbook or personal property book shall have been verified and  
2 delivered, no alteration shall be made in them, or either of them, affecting the taxes of that year,  
3 except on the final order of ~~the court on~~ a successful review or appeal from the assessment.

**§11-3-23a. Informal review and resolution of classification, taxability and valuation issues.**

1 (a) *General.* — Anytime after real or tangible personal property is returned for taxation, the  
2 taxpayer may apply to the assessor of the county in which the property was situated on the  
3 assessment date for information about the classification, taxability or valuation of the property for  
4 property tax purposes for the tax year following the July 1 assessment date. A taxpayer who is  
5 not satisfied with the response of the assessor and wants to further pursue the matter must follow  
6 the procedures set forth in this section.

7 (b) *Classification or taxability.* — A taxpayer who wants to contest the classification or  
8 taxability of property must follow the procedures set forth in section twenty-four-a of this article.

9 (c) *Valuation issues - property appraised and assessed by county assessor.* —

10 (1) A taxpayer who is dissatisfied with the response of the assessor on a question of  
11 valuation and who receives a notice of increase in the assessed value of real property as provided  
12 in section two-a of this article, or a notice of increase in the assessed value of business personal  
13 property as provided in section fifteen-b of this article, who disagrees with the assessed value

14 stated in the notice, may utilize the informal review process specified in this article if the taxpayer  
15 decides to challenge the assessed value.

16 (2) A taxpayer may apply for relief to the county commission sitting as a board of  
17 equalization and review pursuant to section twenty-four of this article or to the Office of Tax  
18 Appeals not later than February 20 of the tax year by filing a written protest with the clerk of the  
19 county commission or the Office of Tax Appeals that identifies the amount of the assessed value  
20 the taxpayer believes to be in controversy and states generally the taxpayer's reason or reasons  
21 for filing the protest. The board or the Office of Tax Appeals shall then set a date and time to hear  
22 the taxpayer's protest ~~Provided, That in the written protest or in a separate notice filed with the~~  
23 ~~board on or before the day of the hearing, the taxpayer or taxpayer's representative may notify~~  
24 ~~the board of the taxpayer's election to have the matter heard when the county commission~~  
25 ~~convenes as a board of assessment appeals in the fall of the tax year as provided in section~~  
26 ~~twenty-four b of this article. A copy of this election shall be served on the assessor, and the Tax~~  
27 ~~Commissioner in the case of industrial property or natural resources property, by personal service~~  
28 ~~or by certified mail. The notice of election shall include an acknowledgment by the taxpayer that~~  
29 The taxpayer will timely pay first and second half installment payments of taxes levied for the  
30 current tax year on or before they become due and that any reduction in assessed value that is  
31 administratively or judicially determined in a decision that becomes final will result in a credit being  
32 established against taxes that become due for a tax year subsequent to the tax year in which the  
33 decision becomes final, except as otherwise stated in the decision or as otherwise provided in  
34 this article. In the event the board of equalization and review adjourns sine die before February  
35 20 of the tax year, a taxpayer may still file its written protest and the acknowledgment described  
36 in this subdivision with the county clerk on or before February 20 of the tax year and the petition  
37 shall be heard when the county commission meets as a board of assessment appeals, as  
38 provided in section twenty-four b of this article Office of Tax Appeals. If a taxpayer fails to provide  
39 its written protest on or before February 20, and the board of equalization and review unilaterally

40 increases the assessed value subsequent to that date, the taxpayer may ~~still~~ file a written protest  
41 and the acknowledgment described in this subdivision with the ~~county clerk and the petition shall~~  
42 ~~be heard when the county commission meets as a board of assessment appeals as provided in~~  
43 ~~section twenty-four b of this article~~ Office of Tax Appeals.

44 (d) *Valuation issues - property appraised by Tax Commissioner and assessed by county*  
45 *assessor. —*

46 (1) A taxpayer who receives a notice of tentative appraised value of natural resource  
47 property or industrial property from the Tax Commissioner pursuant to article six-k of this chapter,  
48 who disagrees with the value stated in the notice may utilize the informal review process specified  
49 in this article and article six-k of this chapter.

50 (2) A taxpayer may apply for relief to the county commission sitting as a board of  
51 equalization and review pursuant to section twenty-four of this article or to the Office of Tax  
52 Appeals no later than February 20 of the tax year by filing a written protest with the clerk of the  
53 county commission or to the Office of Tax Appeals that identifies the amount of the assessed  
54 value the taxpayer believes to be in controversy and states generally the taxpayer's reason or  
55 reasons for filing the protest. The board or the Office of Tax Appeals shall then set a date and  
56 time to hear the taxpayer's protest. ~~Provided, That in the written protest or in a separate notice~~  
57 ~~filed with the board on or before the day of the hearing, the taxpayer or taxpayer's representative~~  
58 ~~may notify the board of the taxpayer's election to have the matter heard when the county~~  
59 ~~commission convenes as a board of assessment appeals in the fall of the tax year as provided in~~  
60 ~~section twenty-four b of this article. A copy of this election shall be served on the assessor, and~~  
61 ~~the Tax Commissioner in the case of industrial property or natural resources property, by personal~~  
62 ~~service or by certified mail. The notice of election shall include an acknowledgment by the~~  
63 ~~taxpayer that.~~ The taxpayer will timely pay first and second half installment payments of taxes  
64 levied for the current tax year on or before they become due and that any reduction in assessed  
65 value that is administratively or judicially determined in a decision that becomes final will result in

66 a credit being established against taxes that become due for a tax year subsequent to the tax  
67 year in which the decision becomes final, except as otherwise stated in the decision or as  
68 otherwise provided in this article. In the event the board of equalization and review adjourns sine  
69 die before February 20 of the tax year, a taxpayer may still file its written protest and the  
70 acknowledgment described in this subdivision with the ~~county clerk on or before February 20 of~~  
71 ~~the tax year and the petition shall be heard when county commission meets as a board of~~  
72 ~~assessment appeals, as provided in section twenty four b of this article~~ Office of Tax Appeals. If  
73 a taxpayer fails to provide its written protest on or before February 20, and the board of  
74 equalization and review unilaterally increases the assessed value subsequent to that date, the  
75 taxpayer may still file a written protest and the acknowledgment described in this subdivision with  
76 the ~~county clerk and the petition shall be heard when the county commission meets as a board of~~  
77 ~~assessment appeals as provided in section twenty four b of this article~~ Office of Tax Appeals.

78 (e) The standard of proof which a taxpayer must meet at all levels of review and appeal  
79 under this section shall be a preponderance of the evidence standard.

**§11-3-24. Review and equalization by county commission.**

1 (a) The county commission shall annually, not later than February 1 of the tax year, meet  
2 as a board of equalization and review for the purpose of reviewing and equalizing the assessment  
3 made by the assessor. The board shall not adjourn for longer than three business days at a time,  
4 not including a Saturday, Sunday or legal holiday in this state, until this work is completed. The  
5 board may adjourn sine die anytime after February 15 of the tax year and shall adjourn sine die  
6 not later than the last day of February of the tax year.

7 (b) At the first meeting of the board, the assessor shall submit the property books for the  
8 current year, which shall be complete in every particular, except that the levies shall not be  
9 extended. The assessor and the assessor's assistants shall attend and render every assistance  
10 possible in connection with the value of property assessed by them.

11 (c) The board shall proceed to examine and review the property books, and shall add on  
12 the books the names of persons, the value of personal property and the description and value of  
13 real estate liable to assessment which was omitted by the assessor. The board shall correct all  
14 errors in the names of persons, in the description and valuation of property, and shall cause to be  
15 done whatever else is necessary to make the assessed valuations comply with the provisions of  
16 this chapter. But in no case shall any question of classification or taxability be considered or  
17 reviewed by the board.

18 (d) If the board determines that any property or interest is assessed at more or less than  
19 60 percent of its true and actual value as determined under this chapter, it shall fix it at 60 percent  
20 of its true and actual value: *Provided*, That no assessment shall be increased without giving the  
21 taxpayer at least five days' notice, in writing, of the intention to make the increase and no  
22 assessment shall be greater than 60 percent of the true and actual value of the property.

23 (e) Service of notice of the increase upon the taxpayer shall be sufficient, or upon his or  
24 her agent or attorney, if served in person, or if sent by registered or certified mail to the property  
25 owner, his or her agent, or attorney, at the last known mailing address of the person as shown in  
26 the records of the assessor or the tax records of the county sheriff. If such person cannot be found  
27 and has no last known mailing address, then notice shall be given by publication thereof as a  
28 Class I legal advertisement in compliance with the provisions of ~~article three, chapter fifty nine~~  
29 §59-3-1, et seq. of this code and the publication area shall be the county. The date of the  
30 publication shall be at least five days, not including a Saturday, Sunday or legal holiday in this  
31 state, prior to the day the board acts on the increase. When the board intends to increase the  
32 entire valuation in any one tax district by a general increase, notice shall be given by publication  
33 thereof as a Class II-0 legal advertisement in compliance with the provisions of ~~article three,~~  
34 ~~chapter fifty nine~~ §59-3-1, et seq. of this code and the publication area shall be the county. The  
35 date of the last publication shall be at least five days, not including a Saturday, Sunday or legal  
36 holiday in this state, prior to the meeting at which the increase in valuation is acted on by the

37 board. When an increase is made, the same valuation shall not again be changed unless notice  
38 is again given as heretofore provided.

39 The clerk of the county commission shall publish notice of the time, place and general  
40 purpose of the meeting as a Class II legal advertisement in compliance with the provisions of  
41 ~~article three, chapter fifty-nine~~ §59-3-1, et seq. of this code and the publication area shall be the  
42 county. The expense of publication shall be paid out of the county treasury.

43 (f) Any person who receives notice as provided in subsection (e) of this section may  
44 appear before the board at the time and place specified in the notice to object to the proposed  
45 increase in the valuation of taxpayer's property. After hearing the board's reason or reasons for  
46 the proposed increase, the taxpayer may present his or her objection or objections to the increase  
47 and the reason or reasons for the objections. ~~and may either orally or in writing advise the board~~  
48 ~~that the taxpayer elects for the matter to be heard in the fall of the tax year when the county~~  
49 ~~commission meets as a board of assessment appeals as provided in section twenty-four-b of this~~  
50 ~~article: *Provided*, That taxpayer's election shall not stay a decision by the board to increase the~~  
51 ~~assessed value of the property for the current tax year~~

52 (g) The board may approve an agreement signed by the taxpayer or taxpayer's  
53 representative and the assessor, and by a representative of the Tax Commissioner when the  
54 property is industrial property or natural resources property, that resolves a valuation matter while  
55 the land and personal property books are before the board for equalization and review.

56 (h) If any person fails to apply for relief at this meeting, he or she shall have waived the  
57 right to ask for correction in the assessment list for the current year, and shall not thereafter be  
58 permitted to question the correctness of the list as finally fixed by the board, except on appeal to  
59 the Office of Tax Appeals, ~~the circuit court~~ or as otherwise provided in this article.

60 (i) After the board completes the review and equalization of the property books, a majority  
61 of the board shall sign a statement that it is the completed assessment of the county for the tax

62 year. Then the property books shall be delivered to the assessor and the levies extended as  
63 provided by law.

64 (j) A taxpayer who elects to have a hearing before the board of equalization and review  
65 may appeal the board's order to the Office of Tax Appeals ~~as provided in section twenty-five of~~  
66 ~~this article. A taxpayer who elects to have a hearing before the board of assessment appeals may~~  
67 ~~only appeal the assessed value as provided in section twenty-four b of this article~~

68 (k) The standard of proof which a taxpayer must meet at all levels of review and appeal  
69 under this section shall be a preponderance of the evidence standard.

**§11-3-24a. Protest of classification or taxability to assessor; appeal to Tax Commissioner,  
appeal to Office of Tax Appeals.**

1 (a) At any time after property is returned for taxation, and up to and including the time the  
2 property books are before the county commission sitting as a board of equalization and review,  
3 any taxpayer may apply to the assessor for information regarding the classification and taxability  
4 of the taxpayer's property. In case the taxpayer is dissatisfied with the classification of property  
5 assessed to the taxpayer or believes that the property is exempt or otherwise not subject to  
6 taxation, the taxpayer shall file objections in writing with the assessor. The assessor shall decide  
7 the question by either sustaining the protest and making proper corrections, or by stating, in  
8 writing if requested, the reasons for refusal to grant the protest.

9 (b) The assessor may, and if the taxpayer requests, the assessor shall, certify the question  
10 to the State Tax Commissioner in a statement sworn to by both parties, or if the parties are unable  
11 to agree, in separate sworn statements, giving a full description of the property and any other  
12 information which the Tax Commissioner requires. The Tax Commissioner shall prescribe forms  
13 on which the aforesaid question shall be certified and the Tax Commissioner shall have the  
14 authority to pursue any inquiry and procure any information necessary for the disposition of the  
15 issue.

16 (c) The Tax Commissioner shall, as soon as possible on receipt of the question, but in no  
17 case later than February 28 of the assessment year, instruct the assessor as to how the property  
18 shall be treated. The instructions issued and forwarded by mail to the assessor shall be binding  
19 upon the assessor, but either the assessor or the taxpayer may apply to the ~~circuit court of the~~  
20 ~~county~~ Office of Tax Appeals within 30 days after receiving written notice of the Tax  
21 Commissioner's ruling for review of the question of classification or taxability. ~~in the same fashion~~  
22 ~~as is provided for appeals from the county commission sitting as a board of equalization and~~  
23 ~~review in section twenty-five of this article~~

24 (d) The amendments to this section enacted in the year 2010 shall apply to classification  
25 and taxability rulings issued for taxes levied after December 31, 2011.

26 (e) The standard of proof which a taxpayer must meet at all levels of review and appeal  
27 under this section shall be a preponderance of the evidence standard.

**§11-3-24b. Board of Assessment Appeals.**

1 [Repealed.]

**§11-3-25. Relief in circuit court against erroneous assessment.**

1 [Repealed.]

**§11-3-25a. Payment of taxes that become due while appeal is pending.**

1 (a) All taxes levied and assessed against the property for the year on which a protest or  
2 an appeal has been filed by the taxpayer as provided in section twenty-four or twenty-four-~~ba~~ of  
3 this article shall be paid before they become delinquent. If the taxes are not paid before becoming  
4 delinquent, the ~~circuit court~~ governing body having jurisdiction of the appeal, as appropriate, shall  
5 dismiss the appeal unless the delinquent taxes and interest due are paid in full within 30 days  
6 after taxes for the second half of the tax year become delinquent.

7 (b) In the event the order of a court or other governing body becomes final and the order  
8 results in an overpayment of taxes levied for the tax year that have been paid to the sheriff, the  
9 amount of the overpayment shall be refunded to the taxpayer if the overpayment is \$25,000 or

10 less within 30 days after the time for appealing the decision or order expires or, if the decision or  
11 order is appealed, within 30 days of the date the appeals court or other governing body turns  
12 down the appeal. ~~Provided, That, if the taxpayer's protest before the county commission below~~  
13 ~~was heard pursuant to the provisions of section twenty four b of this article, the refund shall be~~  
14 ~~paid pursuant to the provisions of that section~~ If the overpayment is more than \$25,000, a credit  
15 in the amount of the overpayment shall be established by the county sheriff and allowed as a  
16 credit against taxes owed up to the following two tax years: *Provided*, That the county commission  
17 may elect to refund the amount of overpayment rather than having a credit established as  
18 provided in this section: *Provided, further however*, That if any portion of the overpayment remains  
19 unused after the date on which taxes payable for the second half of the second tax year following  
20 the tax year of the overpayment become delinquent, that portion shall be refunded to taxpayer by  
21 the county sheriff no later than 30 days after that date or 30 days from the date that the ~~circuit~~  
22 ~~court~~ order becomes final, whichever date occurs later. Whenever an overpayment is refunded  
23 or credited under this section, the county shall pay interest at the rate established in section  
24 seventeen and seventeen-a, article ten of this chapter for overpayments of taxes collected by the  
25 Tax Commissioner, which interest shall be computed from the date the overpayment was received  
26 by the sheriff to the date of the refund check or the date the credit is actually taken against taxes  
27 that become due after the order of the court becomes final.

**§11-3-32. Effective date of amendments.**

1 (a) Unless specified otherwise in this article, all amendments to this article adopted in the  
2 year 2010 shall apply to the assessment years beginning on or after July 1, 2011.

3 (b) Unless specified otherwise in this article, all amendments to this article adopted in the  
4 year 2021 shall apply to the assessment years beginning on or after July 1, 2022.

**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 quasi-judicial agency  
2 separate and apart from the Tax Division to resolve disputes between the Tax Commissioner,

3 county assessors, county commissions, and taxpayers in order to maintain public confidence in  
4 the state tax system. The Legislature does therefore declare that the purpose of this article is to  
5 create the West Virginia office of tax appeals to resolve disputes between the Tax Commissioner,  
6 county assessors, county commissions, and taxpayers and to prescribe the powers and duties of  
7 the office of tax appeals.

**§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.**

1 (a) The Chief Administrative Law Judge is the chief executive officer of the Office of Tax  
2 Appeals and he or she may employ one person to serve as executive director, ~~one~~ two staff  
3 ~~attorney~~ attorneys and other clerical personnel as necessary for the proper administration of this  
4 article. The Chief Administrative Law Judge may delegate administrative duties to other  
5 employees, but the Chief Administrative Law Judge shall be responsible for all official delegated  
6 acts.

7 (1) Upon the request of the Chief Administrative Law Judge, the Governor may appoint up  
8 to ~~two~~ three administrative law judges as necessary for the proper administration of this article.

9 (2) All employees of the Office of Tax Appeals, except the Chief Administrative Law Judge,  
10 shall be in the classified service and shall be governed by the provisions of the statutes, rules and  
11 policies of the classified service in accordance with the provisions of article six, chapter twenty-  
12 nine of this code.

13 (3) Prior to employment by the Office of Tax Appeals, all administrative law judges shall  
14 be admitted to the practice of law in this state and have at least two years of full-time or equivalent  
15 part-time experience as an attorney with federal or state tax law expertise.

16 (4) The Chief Administrative Law Judge and all administrative law judges shall be  
17 members of the Public Employees Retirement System and do not qualify as participants in the  
18 judicial retirement system during their tenure with the Office of Tax Appeals.

- 19 (b) The Chief Administrative Law Judge shall:
- 20 (1) Direct and supervise the work of the legal staff;
- 21 (2) Make hearing assignments;
- 22 (3) Maintain the records of the Office of Tax Appeals;
- 23 (4) Review and approve decisions of administrative law judges as to legal accuracy, clarity
- 24 and other requirements;
- 25 (5) Publish decisions in accordance with the provisions of section sixteen of this article;
- 26 (6) Submit to the Legislature, on or before February 15, an annual report summarizing the
- 27 Office of Tax Appeals' activities since the end of the last report period, including a statement of
- 28 the number and type of matters handled by the Office of Tax Appeals during the preceding fiscal
- 29 year and the number of matters pending at the end of the year; and
- 30 (7) Perform the other duties necessary and proper to carry 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 jurisdiction to hear and determine
- 2 all:
- 3 (1) Appeals from tax assessments issued by the Tax Commissioner pursuant to article ten
- 4 of this chapter;
- 5 (2) Appeals from decisions or orders of the Tax Commissioner denying refunds or credits
- 6 for all taxes administered in accordance with the provisions of article ten of this chapter;
- 7 (3) Appeals from orders of the Tax Commissioner denying, suspending, revoking, refusing
- 8 to renew any license or imposing any civil money penalty for violating the provisions of any
- 9 licensing law administered by the Tax Commissioner;
- 10 (4) Questions presented when a hearing is requested pursuant to the provisions of any
- 11 article of this chapter which is administered by the provisions of article ten of this chapter;
- 12 (5) Matters which the Tax Division is required by statute or legislatively approved rules to
- 13 hear, except employee grievances filed pursuant to article two, chapter six-c of this code; and

14 (6) Other matters which may be conferred on the office of tax appeals by statute or  
15 legislatively approved rules; and

16 (7) Appeals by any party aggrieved by the valuation of real property and personal property  
17 tax assessments and classifications or taxability as set forth in §11-3-1 et. seq. of this code.

**§11-10A-10. Hearing procedures.**

1 (a) The office of tax appeals shall assign a date, time and place for a hearing on a petition  
2 and shall notify the parties to the hearing by written notice at least 20 days in advance of the  
3 hearing date. The hearing shall be held within 45 days of the due date of the commissioner's  
4 answer unless continued by order of the office of tax appeals for good cause.

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

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

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

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

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

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

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

**§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 tax  
3 appeals by taking an appeal to the circuit courts of this state within 60 days after being served  
4 with notice 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)(1) If the taxpayer appeals, the appeal may be taken in the circuit court of Kanawha  
8 County or any county:

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

10 (B) Wherein the taxpayer resides; ~~or~~

11 (C) Wherein the will of the decedent was probated or letters of administration granted; or

12 (D) Wherein the real or personal property is assessed.

13 (2) If the Tax Commissioner appeals, the appeal may be taken in Kanawha County:

14 *Provided,* That the taxpayer shall have the right to remove the appeal to the county:

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

16 (B) Wherein the taxpayer resides; ~~or~~

17 (C) Wherein the will of the decedent was probated or letters of administration granted; or

18 (D) Wherein the real or personal property is assessed.

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

22           (d) The appeal proceeding shall be instituted by filing a petition for appeal with the circuit  
23 court, or the judge thereof in vacation, within the 60 day period prescribed in subsection (a) of this  
24 section. A copy of the petition for appeal shall be served on all parties appearing of record, other  
25 than the party appealing, by registered or certified mail. The petition for appeal shall state whether  
26 the appeal is taken on questions of law or questions of fact, or both, and set forth with particularity  
27 the items of the decision objected to, together with the reasons for the objections.

28           (e) If the appeal is of an assessment, except a jeopardy assessment for which security in  
29 the amount thereof was previously filed with the Tax Commissioner, then within 90 days after the  
30 petition for appeal is filed, or sooner if ordered by the circuit court, the petitioner shall file with the  
31 clerk of the circuit court a cash bond or a corporate surety bond approved by the clerk. The surety  
32 must be qualified to do business in this state. These bonds shall be conditioned upon the petitioner  
33 performing the orders of the court. The penalty of this bond shall be not less than the total amount  
34 of tax or revenue plus additions to tax, penalties and interest for which the taxpayer was found  
35 liable in the administrative decision of the office of tax appeals. Notwithstanding the foregoing and  
36 in lieu of the bond, the Tax Commissioner, upon application of the petitioner, may upon a sufficient  
37 showing by the taxpayer, certify to the clerk of the circuit court that the assets of the taxpayer are  
38 adequate to secure performance of the orders of the court: *Provided*, That if the Tax  
39 Commissioner refuses to certify that the assets of the taxpayer or other indemnification are  
40 adequate to secure performance of the orders of the court, then the taxpayer may apply to the  
41 circuit court for the certification. No bond may be required of the Tax Commissioner.

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

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

49 (h) Either party may appeal to the Supreme Court of Appeals as provided in article six,  
50 chapter twenty-nine-a of this code.

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

NOTE: The purpose of this bill is to change appellate rights of property owners concerning valuation, classification, and taxability of real estate and personal property taxation; provide that residential property owners may not be required to furnish a formal appraisal to establish the value of their primary residence; provide that an assessor's review is to be an informal process and define the standard of proof which a taxpayer must meet to be no greater than a preponderance of the evidence; expand the jurisdiction of the Office of Tax Appeals to include property tax valuation, classification, and taxability; provide that if an assessor rejects a petition, the petitioner may appeal to the county Board of Equalization and Review or the Office of Tax Appeals; allow for certain appeals from decisions of the Tax Commissioner and Board of Equalization and Review to the Office of Tax Appeals; repeal and eliminate the Board of Assessment Appeals; provide for an increase in the number of administrative law judges and staff attorneys within the Office of Tax Appeals; provide an effective date; and make technical changes.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.