



ARCH A. MOORE, JR.  
GOVERNOR

# State Tax Department of West Virginia

OFFICE OF HEARINGS AND APPEALS  
1217 QUARRIER STREET  
CHARLESTON 25301

Reply to: Post Office Box 2389  
Charleston 25328  
(304) 348-8842

## NOTICE OF PUBLIC HEARING OR COMMENT PERIOD ON PROPOSED RULE

### COMMENT PERIOD

AGENCY: State Tax Department, Office of Hearings & Appeals

RULE TYPE: Procedural

RULE TITLE: Rules of Practice and Procedure

Office of Hearings and Appeals, State Tax Department

A COMMENT PERIOD ON THE ABOVE PROPOSED RULE HAS BEEN SCHEDULED AND WILL

END ON September 18 AT 5:00 pm. WRITTEN COMMENTS ARE TO BE

MAILED TO THE FOLLOWING ADDRESS: Office of Hearings & Appeals

1217 Quarrier Street

Charleston, WV 25301

THE ISSUES TO BE HEARD SHALL BE LIMITED TO THE PROPOSED RULE.

*Rabbi C. Capobianco*

Director, Office of Hearings  
Appeals

FILED  
AUG 19 PM 3:55  
15 SEP 1988  
STATE

RULES OF PRACTICE AND PROCEDURE

OFFICE OF HEARINGS AND APPEALS

STATE TAX DEPARTMENT

OF

WEST VIRGINIA

1986

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OFFICE OF THE CLERK  
STATE TAX DEPARTMENT

WEST VIRGINIA PROCEDURAL RULES  
TAX DEPARTMENT  
SERIES \_\_\_\_

Title: Rules of Practice and Procedure of the Office of Hearings and Appeals, State Tax Department.

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Section 1. General

1.1 Scope - The Rules of Practice and Procedure of the Office of Hearings and Appeals shall be procedural rules. They shall provide a uniform process by which a taxpayer may dispute tax assessment or refund determination. The Rules shall govern all proceedings before the Office of Hearings and Appeals and be construed to secure the just and speedy determination of tax disputes.

1.2 Authority & Related Citations. The Rules of Practice and Procedure are promulgated pursuant to W. Va. Code 29A-3. .

1.3 Filing Date -

1.4 Effective Date-

Section 2 Commencement of Action

An action is commenced by filing a petition for reassessment or a petition for refund and credit personally or by certified mail to:

Office of Hearings and Appeals  
State Tax Department  
Post Officer Drawer 2389  
Charleston, West Virginia 25328

2.1 Time Limitations

2.1.1 The Petition for Reassessment - The petition for reassessment shall be in writing and filed within 60 days from the receipt of the notice of assessment. The petitioner may file the petition in person with the Office of Hearings & Appeals or through certified mail.

The filing date shall be the date of the United State postmark or the date of personal delivery.

2.1.2 The Petition for Refund or Credit - A petition for refund or credit must be filed within 60 days after the taxpayer is served with the denial of his claim. In addition, if the tax commissioner has not determined the taxpayer's claim for refund within 90 days after such claim was filed, or six months in the case of claims for refund or credit of the taxes imposed by W. Va. Code 11-21-1 esteq. and 11-24-1 esteq., the claimant may file a petition. The petitioner may file a petition in person with the Office of Hearings and Appeals or through certified mail. The filing date shall be the United States postmark of the date of personal delivery.

2.1.3 Jeopardy assessments - If the tax commissioner issues a jeopardy assessment, the amount assessed shall immediately be due and payable. Unless the taxpayer against whom a jeopardy assessment is made petitions for reassessment within twenty days after service of notice of the jeopardy assessment, such assessment shall be final.

2.2 Failure to File - If the taxpayer does not file a petition for reassessment within 60 days, the assessment becomes final and is not subject to administrative or judicial review.

### Section 3 UNTIMELY PETITIONS

When petitions are received that have not been timely filed the tax commissioner will send a letter to the taxpayer informing him of the untimeliness. If the taxpayer feels that such action was taken in error, the taxpayer may request a hearing to protest the untimeliness decision.

### Section 4 PERFECTION OF PETITION

#### 4.1 FORM - The petition shall include:

1. The taxpayer's name, address, and telephone number.
2. The type of tax objected to or the type of tax overpaid.
3. The reasons for the objections.
4. The amount in question.
5. The relief sought by the taxpayer.
6. The signature of the taxpayer or representative.
7. A statement made under oath before a notary public that the facts asserted in the statement are accurate.
8. Request for location - Charleston, Clarksburg, Wheeling, Martinsburg.

4.1.1 The Objections to the Assessment - The Petitioner must set forth with particularity the items objected to, together with the reasons for the objections. The objections shall detail both the questions of fact and the questions of law that are in dispute. Failure to comply with this requirement results in a deficient petition.

4.2 MOTION/NOTICE FOR A MORE DEFINITE STATEMENT

If a petition for reassessment does not set forth with particularity the items of the assessment objected to, together with the reasons for the objections, pursuant to W. Va. Code § 11-10-8, the petition will be deemed deficient.

Such deficiency shall be alleged by the legal division attorney with a motion for a more definite statement within 10 days from the date of receipt of the petition. The motion shall be granted or denied by the hearing examiner within 10 days from the day of the receipt of the motion. If the motion is granted the petitioner must submit a new statement detailing the items of the assessment objected to, together with the reasons for the objections. If the petitioner fails to submit a more definite statement within 10 days of receipt of the request for such, the petition shall be dismissed.

If the legal division attorney does not move for a more definite statement, the hearing examiner may serve notice for a more definite statement. If the petitioner fails to submit a more definite statement within 10 days of receipt of the request for such, the petition shall be dismissed.

4.3 Failure to Perfect - If a Notice for a More Definite Statement has been issued and the petitioner fails to comply with the requirements of this section, the Office of Hearings and Appeals shall promptly return the same to Petitioner together with a notice that said submitted petition does not comply with the requirements of this section, and extend to Petitioner an additional 10 days to perfect petition. If this petition remains unperfected, the petition, upon motion by the State, may be dismissed for failure to perfect.

Section 5 NOTICE OF HEARING

After timely filing of a petition, the hearing examiner shall assign a time and place for a hearing and shall notify the Petitioner of such hearing by written notice at least twenty days prior to the hearing.

5.1 Service of Notice of Hearing - Notice of the hearing shall be served upon the taxpayer either by personal or substituted service or by certified mail.

Section 6 CONTINUANCES

Continuances are not favored. They are inconsistent with the revenue and taxpayer objectives of the State Tax Department.

Hearings will be continued only upon a clear showing of good cause to the Hearing Examiner. A party who desires a continuance shall, immediately upon notice of the hearing, or as soon thereafter as facts requiring

continuances comes to his knowledge, file a written motion with the Office of Hearings and Appeals stating in detail the reasons why such continuance is necessary. Such motion shall be filed by mail or in person at the Office of Hearings and Appeals and be received at least three days prior to the date of the hearing.

Good cause shall normally not include:

- a. Conflicting engagements of counsel, unless set forth in a motion filed promptly after the notice of the hearing has been received.
- b. Employment of new counsel, unless set forth in a motion filed promptly after the notice of hearing has been received.
- c. The fact that the controversy involves an issue on appeal in the courts, other than under exceptional circumstances.
- d. The fact that the hearing date interferes with the work load of either party's representative.

6.1 Notice of a Continued Hearing - A Petitioner may waive his right to written notice 20 days prior to the hearing upon the continuance of a previously scheduled hearing.

## Section 7 - EVIDENCE/DISCOVERY

7.1 General Policy - Discovery has three distinct purposes and uses:

1. To narrow the issues, in order that at the trial it may be necessary to produce evidence only as to a residue of matters which are found to be actually disputed and controverted.
2. To obtain evidence for use at trials.
3. To secure information as to the existence of evidence that may be used at the trial and to ascertain how and from whom it may be procured.

7.2 General Methods - Parties may obtain evidence through one or more of the following methods: bill of particulars, depositions, interrogatories, exhibit, exchange, stipulations, subpoenas, and subpoena duces tecums.

7.2.1 Bill of Particulars - A party may wish the adverse party to supply further details of the allegations to prevent surprise at the hearing and limit the scope of proof.

The written demand for a bill of particulars must state the items concerning which such particulars are desired.

7.2.2 Depositions - After commencement of the action, the State of the Petitioner may take the testimony of any person, including a party, by deposition upon oral examination. The Commissioner or his authorized agent may, on its own motion, order testimony to be taken by deposition in any proceeding or investigation pending before it. Such depositions shall be

taken in the manner prescribed by the laws of West Virginia for taking depositions in civil cases in courts of record.

7.2.3 Interrogatories - A party may file interrogatories in writing which must be pertinent to substantial issues in the petition. Such interrogatories are to be answered under oath by the adverse party for the discovery of facts in support of or in defense against the claim. Such interrogatories must comply with Rule 33 of the West Virginia Rules of Civil Procedure.

7.2.4 Exhibit Exchange - All written documents to be used as exhibits that will be presented as evidence during the hearing will be presented to the opposing (15) days before the scheduled hearing. Notice shall be given of any exhibit that is not a written document that will be used as evidence.

7.2.5 Subpoena and Subpoena Duces Tecum - The tax commissioner, or his delegate, shall have the power to issue subpoenas and subpoena duces tecum to compel the attendance of witnesses and the production of books, papers, records, documents, and testimony at the hearing. This power may be exercised upon request of any person who is a party in any hearing.

Every such subpoena and subpoena duces tecum shall be served at least five days before the return date thereof, by either personal service made by any person over eighteen years of age, or by registered or certified mail.

7.26 Stipulations - The parties to any proceeding may by stipulation in writing agree upon any facts involved in the action. This stipulation shall be binding on the parties thereto and may be considered by the hearing examiner as evidence at the hearing.

7.3 Cost - Any cost incident to service or obtaining evidence is the responsibility of the parties.

## Section 8 PREHEARING CONFERENCE

The hearing examiner may, on its own motion or upon motion by any party, with reasonable written notice, request all interested parties to attend a prehearing conference for the purpose of determining the feasibility of settlement or formulating the issues to be decided in the formal hearing. These conferences shall follow the directive of Rule 16 of the West Virginia Rules of Civil Procedure.

8.1 Early Determinations - An early determination (ED) is a method of resolving disputes without the necessity of a formal hearing. The submission of an Early Determination Memorandum shall be no later than five (5) weeks prior to the scheduled hearing date directly from the recommending Staff Attorney to the Tax Commissioner for review.



Upon sending the Early Determination to the Tax Commissioner, copies will be simultaneously sent to the Legal Division Director, the auditor responsible for issuing the assessment, and the Office of Hearings and Appeals.

These parties will be given a period of two weeks to review the proposal and submit comments to the Tax Commissioner. Upon approval of the Early Determination, the recommending staff attorney will draft the Early Determination letter and forward a copy to the Office of Hearings and Appeals.

If the taxpayer and the State Tax Department agree on a resolution of the controversy in the petition, the petition will be withdrawn.

## Section 9      THE HEARING

9.1      Notice: The parties shall be given a minimum of 20 days notice of the hearing date. Such notice shall include the time, place and date of the hearing. Hearings are usually held at the following address:

Office of Hearings and Appeals  
State Tax Department  
1217 Quarrier Street  
Charleston, WV

9.2      Representation - The petitioner may represent himself or be represented by a selected representative or legal counsel. The State Tax Department will be represented by legal counsel. In most instances, a State accountant or auditor will also be present.

9.3      Appearance = The petitioner may choose not to be present at the hearing in which case the hearing will be conducted without the appearance of the petitioner.

9.3.1      Failure to Appear - The petitioner's failure to appear will result in a default decision unless the petitioner has presented his case through prior written documents.

9.4      Hearing Examiner - The hearing shall be conducted by an impartial hearing examiner designated by the State Tax Commission. The hearing examiner shall have the authority to examine witnesses, to rule on motions, and to rule on the admissibility of evidence. He shall have the authority to continue or recess any hearing, to control the hearing, to control the record and to propose decisions to the tax commissioner.

9.5      Conduct of Hearings - The hearing shall be informal with proper inquiry into the factual nature of the case and proper application of the pertinent law.

The hearing will be convened by the hearing examiner; appearances will be noted; any motions or preliminary matters will be dealt with; each party will then present its case with an opening statement, direct and cross-examination, and a closing statement.

Objections to the admissibility of testimony or evidentiary offers should be made at the time of the offer and the basis of the objection stated.

In a petition for reassessment the Petitioner is entitled to assert the final argument. In a refund determination, the State is entitled to assert the final argument.

9.6 Burden of Proof - The burden of proof at the hearing shall be on the taxpayer to show by a preponderance of the evidence that the assessment is incorrect and contrary to the relevant law. (Refund is due)

9.7 Testimony - All testimony given as evidence during the hearing shall be given under oath.

9.8 Briefs - The hearing examiner may request that briefs be submitted in addition to presented evidence or in lieu of closing arguments. The parties shall submit one copy to the Office of Hearings and Appeals and one copy to the opposing party. The date designated as the due date of the briefs shall be the date of the United States postal service postmark.

## Section 10 APPEALS

10.1 Time Limitations - An appeal must be taken within sixty days after being served with notice of the administrative decision.

10.2 Right of Appeal - A taxpayer may appeal the administrative decision of the tax commissioner or his representative by taking an appeal to the circuit courts of this state. This appeal may be taken in the circuit court of any county:

1. Wherein the activity tax was engaged in, or
2. Wherein the taxpayer resides, or
3. Wherein the will of the decedent was probated or letters of administration granted, or
4. To circuit court of Kanawha County.

10.3 Commencement of Appeal - The taxpayer may institute an appeal by filing a petition with the circuit court. This petition shall be in writing, verified under oath by the taxpayer, or his duly authorized agent. The petition shall set forth with particularity the items of the administrative decision objected to, together with the reasons for the objections.

10.4 Appeal Bond - Before the appeal is heard, the taxpayer shall file with the clerk of the circuit court a cash bond or a corporate surety bond approved by the clerk. This bond shall be filed within ninety days after the petition for appeal is filed. The bond shall not be less than the total amount of tax, additions to tax penalties and interest for which the taxpayer was found liable in the administrative hearing.

State Tax Department  
Procedural Rule  
Series \_\_, Sec. 10.4

Notwithstanding the foregoing, the tax commissioner may certify to the clerk of the circuit court that the assets of the taxpayer are sufficient to secure performance of the orders of the court.

10.5 Appeal from the Circuit Court - An appeal may be taken from the decision rendered in circuit court by the taxpayer on the tax commissioner to the West Virginia Supreme Court of Appeals.

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