NOTICE OF PUBLIC HEARING

Pursuant to Chapter 29A, Article 3 of the West Virginia Code of 1931, as amended, the West Virginia State Tax Department shall convene a public hearing at 9:00 a.m. on December 11, 1978 in the Senate Judiciary Committe Room, Capitol Building, Charleston, West Virginia for the purpose of taking testimony pertaining to the filing of rules and regulations relating to the West Virginia Tax Procedure and Administration Act.

All persons desiring to present oral testimony on the proposed rules and regulations shall be present in person at the hearing. The issues to be discussed at the hearing shall be limited to actual information contained in the proposed rules and regulations. All written testimony offered for consideration with reference to these proposed rules and regulations shall be submitted to the State Tax Department, Legal Division, Capitol Building, W-408, Charleston, West Virginia, 25305, on or before December 31, 1978.

A copy of the proposed rules and regulations may be obtained from the State Tax Department, Legal Division - Telephone: 304/348-5330.

David C. Hardesty, Jr.
State Tax Commissioner

STATE OF WEST VIRGINIA

OFFICE OF THE SECRETARY OF STATE

CHARLESTON 25305

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, David C. Hardesty, Jr., Commissioner (Title or Position), Tax (Department or Division), hereby submit to record in the State Register on 8 1/2 x 11" paper two (2) copies of

(x) proposed rules and regulations concerning topics of material not covered by existing rules and regulations;

(x) proposed rules and regulations superseding rules and regulations already on file;

(x) notice of hearing;

( ) findings and determinations;

( ) rules and regulations; or

( ) other - specify ( ).

FILED IN THE OFFICE OF SECRETARY OF STATE OF WEST VIRGINIA

THIS DATE 11-8-78

This filing pertains to

Chapter 11
Article 10
Series I
Section
Page No.

(x) proposed rules and regulations are required to go to Legislative Rule Making Committee;

( ) proposed rules and regulations are excluded from Legislative Rule Making Committee;

November 8, 1978
Date Submitted

Signature of Person Authorizing this Filing

State Tax Department of West Virginia

Charleston 25305

DAVID C. HARDESTY, JR.
COMMISSIONER

November 8, 1978

Honorable A. James Manchin
Secretary of State
State Capitol Building
Charleston, West Virginia 25305

Dear Mr. Manchin:

Pursuant to the provisions of Chapter 29A, Article 3 of the West Virginia Code of 1931, as amended, I hereby submit three copies of the proposed rules and regulations relating to the West Virginia Tax Procedure and Administration Act, Chapter 11, Article 10 of the West Virginia Code of 1931, as amended.

The proposed rules are rules of procedure and practice for dealings with and proceedings before the State Tax Department. Since these regulations also interpret, clarify or explain the application of certain substantive provisions of the West Virginia Tax Procedure and Administration Act, a public hearing will be held on the proposed rules and we will submit them for review by the Legislative Rule-making Review Committee.

The State Tax Department will hold a public hearing on December 11, 1978 at 9:00 a.m. in the Senate Judiciary Committee Room to allow interested persons to present oral or written comments on the proposed rules. Written statements may also be mailed to the Tax Department and must be received on or before December 31, 1978.

Very truly yours,

David C. Hardesty, Jr.
State Tax Commissioner

DCHJr/DWS/mc

Enclosure

WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT

RULES AND REGULATIONS

CHAPTER 11, ARTICLE 10

Submitted to State Register:

November 8, 1978

Effective:

WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT
RULES AND REGULATIONS

CHAPTER 11, ARTICLE 10

SERIES I
1978

SUBJECT. The following rules and regulations are issued under the authority of Chapter 11, Article 10 of the West Virginia Code of 1931, as amended (West Virginia Tax Procedure and Administration Act) and pursuant to the provisions of Chapter 29A of the West Virginia Code of 1931, as amended, and they serve two purposes. First, they repeal all prior procedural regulations in effect on July 1, 1978 that are inconsistent with Chapter 11, Article 10. Second, together with the language of Chapter 11, Article 11, Section 1 et seq., these regulations set forth the rules of procedure to be followed in practice before the West Virginia Tax Department.

TPA Reg. § 1. REPEAL OF INCONSISTENT RULES. The following rules and regulations are repealed by reason of being made obsolete by the West Virginia Tax Procedure and Administration Act (Chapter 11, Article 10):

TPA Reg. § 1.01. BUSINESS AND OCCUPATION TAX REGULATIONS.

a. BOT § 1.5 Return and Remittance by the Taxpayer

b. BOT § 2.1 Assessment or Deficiency of Tax

c. BOT § 2.2 Petition for Reassessment

d. BOT § 2.3 Hearings and Appeals

e. BOT § 2.4 Refunds

TPA Reg. § 1.02. <u>CONSUMERS SALES AND SERVICE TAX AND USE TAX REGULATIONS</u>.

a. CUT § 2.1 Tax Returns, Payment, Due Dates and Penalty

b. CUT § 2.2 Record Retention Examination

c. CUT § 2.4 Refunds

d. CUT § 2.5 Assessment or Deficiency of Tax

e. CUT § 2.6 Petition for Reassessment

f. CUT § 2.7 Hearings and Appeals

TPA Reg. § 1.03. <u>ANNUAL TAX ON INCOMES OF CERTAIN CARRIERS</u>.

a. ATC § 2.1 Return and Remittance by the Taxpayer

b. ATC § 2.2 Assessment or Deficiency of Tax

c. ATC § 2.3 Petition for Reassessment

d. ATC § 2.4 Hearings and Appeals

TPA Reg. § 1.04. <u>CORPORATION NET INCOME TAX</u>.

a. CNIT § 3.1 General Provisions

b. CNIT § 3.2 Assessment and Deficiency Procedure

c. CNIT § 3.4 Overpayments and Refunds

d. CNIT § 3.5 Limitations on Assessment

e. CNIT § 3.6 Interest, Additions to Tax and Penalties

TPA Reg. § 1.05. <u>CIGARETTE TAX</u>.

a. Section 6 Dealers' Records and Reports

b. Section 12 Wholesale Dealers, Sub-jobbers, Retail Dealers and Vending Machinery Operators Sales Records

TPA Reg. § 1.06. <u>SOFT DRINKS TAX</u>.

a. Section 21 Records and Audits

b. Section 24 Penalties

TPA Reg. § 1.07. PERSONAL INCOME TAX.

a. IT § 1.57

b. IT § 1.58

TPA Reg. § 2. APPLICATION OF REGULATIONS.

(a) The following taxes collected by the tax commissioner are subject to the procedures outlined in these regulations.

Name of Tax	W. Va. Code Reference
Business and occupation tax	§ 11-13-1 et seq.
Business franchise registration tax	§ 11-12-1 to § 11-12-18
Carrier income tax	§ 11-12A-1 et eq.
Cigarette tax	§ 11-17-1 et seq.
Consumer sales and service tax	§ 11-15-1 et seq.
Corporation net income tax	§ 11-24-1 et seq.
Gasoline and special fuels excise tax	§ 11-14-1 et seq.
Inheritance and transfer taxes	§ 11-11-1 et seq.
Interstate compromise of inheritance and death taxes	§ 11-11A-1 et seq.
Interstate arbitration of inheritance and death taxes	§ 11-11B-1 et seq.
Motor carrier road tax	§ 11-14A-1 et seq.
Personal income tax	§ 11-21-1 et seq.
Soft drinks tax	§ 11-19-1 et seq.
Use tax	§ 11-15A-1 et seq.

(b) The program providing tax relief for elderly homeowners and renters found in W. Va. Code § 11-25-1 et seq. is subject to those provisions of these regulations relating to assessments, hearings and appeals.

(c) These regulations do not apply to the corporate license tax (W. Va. Code § 11-12-76 et seq.) or the ad valorem taxes on real and personal property (W. Va. Code Chapter 11, Articles 3, 4, 5, 6 and 8).

TPA Reg. § 3. GENERAL REQUIREMENTS OF RETURN.

(a) General rule. -- Every person subject to any tax, or required to file an information return for any tax, or required to collect any tax, administered under the West Virginia Tax Procedure and Administration Act shall make such returns or statements as are required by law or by regulation. The return or statement shall include any information required by the tax law, applicable regulations or the tax return form.

(b) Use of prescribed forms. -- Copies of the prescribed return forms will to the extent possible be furnished to taxpayers. A taxpayer will not be excused from making a return by the fact that no return form has been furnished to him. Taxpayer's not supplied with the proper forms should contact the tax department in sufficient time to obtain the forms and to have them prepared and filed on or before the due date.

(c) Completion of return forms. -- Each taxpayer should carefully prepare his return setting forth fully and clearly the information required to be included therein. Return forms which have not been prepared in this manner may not be accepted by the tax commissioner as being tax returns for purposes of interest, additions to tax or statutes of limitation.

(d) Where taxpayer does not have return form. -- In the absence of a prescribed form, a statement made by a taxpayer disclosing all the information necessary to determine his tax liability may be accepted as a tax return, and, if filed within the time prescribed for filing the tax return, the statement will relieve the taxpayer from liability for the additions to tax imposed for the delinquent filing of the return.

(e) Signing of returns. -- Each return required for a tax administered under the West Virginia Tax Procedure and Administration Act shall be signed by:

(1) the individual, if the person required to make the return is an individual;

(2) the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to sign such returns, if the person required to make the return is a corporation;

(3) a responsible and duly authorized member or officer having knowledge of its affairs, if the person required to make the return is a partnership or other unincorporated organization;

(4) the fiduciary, if the person required to make the return is a trust or estate; or

(5) the duly authorized agent of the taxpayer provided the agency is disclosed on the tax return and a copy of the written instrument authorizing the agent to sign the return for or on behalf of the taxpayer is filed with the tax return. Once a copy of the instrument authorizing an agent to file tax returns for a particular tax is filed, a copy must be filed with each succeeding annual return but need not be filed with each succeeding periodic return. When no annual return is required, a copy of the authorization should be filed with the first periodic return (monthly or quarterly) filed for the tax year. (An optional authorization form is reprinted at page 7).

To: The West Virginia State Tax Commissioner

Delegation of Authority

Name of taxpayer(s): ______________________________

Identification No.: ______________________________

Mailing Address: ______________________________

Telephone Number: ______________________________

The above named taxpayer(s) does hereby authorize:

Name: ______________________

Mailing Address: ______________________

Telephone Number: ______________________

to perform on behalf of the taxpayer(s) the following acts: (Strike through any of the following which are not granted)

To execute and file tax return forms (including any annual, periodic, estimated or information returns) for the following tax ______________________________.

To execute and file petitions for reassessment of the following tax ______________________________.

To execute and file claims and petitions for refund or credit of the following tax ______________________.

To receive, but not to endorse and collect, any warrant for the refund of ______________________________ tax, including any additions to tax, penalties or interest.

(other acts - specify) ______________________________

____

This delegation of authority shall be effective as of ______________________________, shall revoke all earlier authorizations, and shall remain in effect until terminated by written notice to the Tax Commissioner.

Signature of or for taxpayer(s)

(If signed by a corporate officer, partner, or fiduciary on behalf of the taxpayer, I certify that I have authority to execute this instrument on behalf of the taxpayer).

____

Signature Title Date

____

Signature Title Date

(f) Signature prima facie evidence. -- An individual's signature on a tax return, statement or other document made by or for an individual, corporation, partnership, unincorporated organization or any other group or combination acting as a unit shall be prima facie evidence that such individual was duly authorized to sign such return, statement or other document.

(g) Failure to properly sign return. -- A tax return not properly signed is not a tax return. Additions to tax and penalties for failure to file a return may be imposed. In addition, a return not properly signed will not start the running of the statutes of limitations on assessment and collections.

(h) Time for filing returns. -- The different tax laws administered under the West Virginia Tax Procedure and Administration Act each specify the type of return that must be filed and its due date. A summary chart is provided below.

Tax	Report Period	Due Date
Business and Occupation	Annual	1 month after close of tax year (calendar taxpayer 1/31)
	Quarterly	1 month after end of quarter
	Monthly	last day of each month for pric
Business Franchise	Annual	July 1
Carrier Income	Annual	15th day of 3rd month after end of tax year

Cigarette	Monthly	15th of each month for prior month
Consumers Sales and Service	Quarterly	15 days after end of quarter
	Monthly	15 days after end of month
	Annual	30 days after end of tax year
Corporation Net Income	Annual	15th day of 3rd month after end of tax year
	Quarterly	15th day of the 4th, 6th, 9th & 12th months of tax year
Gasoline	Monthly	last day of each month for prior month
Homestead Relief	Annual	September 30
Inheritance		11 months after date of death
Motor Carrier Road	Monthly	last day of April, July, October and January
Personal Income	Annual	15th day of 4th month after end of income year (April 15)
	Quarterly	April 15, June 15, Sept. 15, Jan. 15 (for persons required to estimate)
Soft Drinks	Monthly	15th of each month for prior month
Use	Quarterly	15 days after end of quarter
Withholding	Quarterly	last day of January, April, July and October
	Monthly	before the 20th of each month for the prior month
	Annual	one month after close of tax year

(i) Extension of time to file tax return. -- Generally, the tax commissioner may, upon written application by the taxpayer setting forth good cause, extend the time for filing a tax return and paying the taxes due, on such terms and conditions as he may require. An extension of time will not change the date on which interest begins to accrue under W. Va. Code § 11-10-17. However, it will extend the date on which additions to tax accrue under W. Va. Code § 11-10-18.

(1) Period of extension. -- Generally, extensions of time will be granted for a period of six (6) months or less.

(2) Automatic extension for income tax returns. -- Where a taxpayer receives an extension of time to file his federal income tax return, he will automatically be granted an identical extension of time to file his West Virginia personal income tax or corporation net income tax return. A copy of the federal form or letter granting an extension of time must be attached to the taxpayer's West Virginia tax return when it is filed. No additional time will be allowed to file the West Virginia return after the federal extension of time expires.

(3) Excise taxes. -- Extensions of time for filing gasoline and special fuels excise tax, the motor carrier road tax and use tax returns

cannot exceed thirty (30) days from date the tax return was originally due.

(4) Application for extension of time. -- A taxpayer who desires an extension of time to file a tax return must submit a written request, therefore, on or before the due date of such return. Application for an extension of time must be made to the division of the tax department with which the tax return is to be filed. This application: (a) must be in writing; (b) must be properly signed by the taxpayer or his duly authorized agent; (c) must clearly identify the particular tax return, including the taxable year or period involved, for which an extension of time for filing is desired; and (d) must include a complete statement of the reason(s) for requesting the extension, to aid the tax department in determining the period of extension, if any, that will be granted. No particular form is required. Application for an extension of time may be made in the form of a letter. (An optional application form is reprinted at page 12).

Application for Extension of Time to File

Name of taxpayer ______________________________

Address ______________________________

City, Town or Post Office ______________________________

File No. or Social Security No. ______________________________

1. An extension of time until ____________________, 19_____,

   is hereby requested in which to file the ____________________
   type of tax

   return (annual________, quarterly________, monthly________)

   which is due ____________________, 19________.

2. Has an extension of time been previously granted for this return? YES________ NO________

3. State in detail the reason(s) the taxpayer needs an extension.

   ____

   ____

   ____

   ____

   Signature of taxpayer ____________________________ Date:________

Required additional information:

1. If an extension of time is requested to file a joint personal income tax return, please complete:

   Name of spouse ______________________________

   Signature of spouse ______________________________

   Social Security No. ______________________________

2. If an extension of time is requested to file a consolidated corporation net income tax return, please identify the name of each corporation and its identification number.

(j) Place for filing returns or other documents. -- Tax returns or other documents may be filed in person or by mail.

(1) Personal filing. -- All divisions of the tax department that are responsible for the administration and collection of a tax are located in the Capitol Complex area although not necessarily in the same building. Tax returns or other documents may be filed with the collecting division or at the tax department's cashier's office which is located in Room W-302, West Wing of the Capitol Complex. Until further notice, the location of the collecting divisions are:

(A) Business Tax Division
Capitol Building, Room W-317

(B) Division of Excise & License Taxes
Building 5, Room 109

(C) Inheritance Tax Division
Capitol Building, Room W-409

(D) Personal Income Tax
Capitol Building, Room W-417

(2) Mailing address. --

West Virginia State Tax Department
(Administering Division)
Capitol Building
Charleston, West Virginia 25305

TPA Reg. § 4. BOOKS AND RECORDS.

(a) General. -- Every person subject to any tax, or required to file an information return for any tax, or required to collect any tax, administered under the West Virginia Tax Procedure and Administration Act shall keep such permanent books and records, including records of inventories, as are sufficient to establish the amount of tax due the State of West Virginia, or to verify any information required to be shown on any tax return or information return. Records must be kept accurately, but no particular format is required. However, the format and system of accounting used by the taxpayer must be such as will enable the tax department to determine whether liability for tax was incurred and, if so, the amount thereof.

(b) Records of person claiming refund. -- Any person who files a claim for refund or credit under TPA § 15, or who files a claim for relief from property taxes under W. Va. Code § 11-25-5, shall, in addition to any records required by law, keep such books and records as are sufficient to prove entitlement to the amount of his claim.

(c) Exempt organizations. -- In addition to the permanent books and records required to be kept by subsection (a), exempt organizations shall also keep such records as are necessary to substantiate their exempt status.

(d) Notice by tax commissioner requiring returns, statements, or the keeping of records. -- The tax commissioner may require any person, by written notice, to make such returns, render such statements, or keep such specific records as will enable the commissioner to determine whether or not the person is liable for any tax administered under the West Virginia Tax Procedure and Administration Act.

(e) Retention of records. -- Books and records required to be kept by this section shall be available for inspection by authorized tax department employees and shall be retained for the period of time during which their contents may be important in the administration and collection of state taxes. Generally, this means the period of time during which the state may assess and collect its taxes and the period of time during which the taxpayer may file a claim for refund or credit.

(1) For statute of limitations on issuing assessments, see TPA Reg. § 20.

(2) For statute of limitations on collection proceedings, see W. Va. Code § 11-10-16.

(3) For statute of limitations on filing claims for refund or credit, see TPA Reg. § 15.01.

(4) Exception. -- Books and records necessary to verify claimed qualified investment for industrial expansion should be kept for thirteen years after date the property is first placed into service or use.

TPA Reg. § 5. INSPECTION OF BOOKS AND RECORDS.

(a) General. -- The tax commissioner is authorized to examine any books, papers, records, memoranda, inventory or equipment bearing upon the matters required to be included in any tax return and may make test checks of tax yield.

(b) Gasoline and special fuels excise tax. -- In addition to subsection (a), the tax commissioner may inspect or examine the records, books, papers, storage tanks, meters and any equipment records of a taxpayer, or other person, to verify the truth and accuracy of any report or return, to determine whether the gasoline and special fuels excise tax has been properly paid.

(c) Motor carrier road tax. -- In addition to subsection (a), the tax commissioner may inspect records, books, papers, storage tanks, meters and any equipment records necessary to verify highway miles traveled within and without the State of West Virginia, the number of gallons of gasoline and special fuels used and purchased within and without West Virginia and the records of any other person, to verify the truth and accuracy of any statement or report, to determine whether the motor carrier road tax has been properly paid.

(d) Cigarette tax. -- In addition to subsection (a), the tax commissioner may inspect or examine the stock of cigarettes kept in and upon the premises of any person where cigarettes are placed, stored or sold and may inspect or examine the records, books, papers, and any equipment or records of manufacturers, cigarette stamping agents, wholesalers, subjobbers, retail dealers, common carriers or any other person for the purpose of determining the quantity of cigarettes acquired or disbursed, to verify the truth and accuracy of any statement or report and to ascertain whether the cigarette taxes have been properly paid.

TPA Reg. § 6. SECRECY OF RETURNS.

(a) General rule. -- Tax returns and tax return information are confidential and cannot be disclosed except as authorized by law. Tax return information may be disclosed:

(1) when required in an official investigation by the tax commissioner into the amount of tax due;

(2) when required in any proceeding instituted by the tax commissioner before a court of competent jurisdiction to collect or ascertain the amount of tax due;

(3) under a reciprocity agreement, or reciprocal exchange statute, with the proper officer of the United States, or the District of Columbia, or any other state, or any political subdivision of this state, provided such other jurisdiction has a secrecy of return statute which meets the requirements of I.R.C. § 6103(p)(8) and, the information will be used only for tax purposes; or

(4) in the publication or release of statistics so classified to prevent identification of the taxpayer and to prevent identification of particular reports and the items thereof.

(b) Definition of "return". -- The term "return" means any tax or information return, declaration of estimated tax or claim for refund required by, or provided for, or permitted under the provisions of Chapter 11, which is filed with the tax department on the behalf of or with respect to any person and any amendment or supplement thereto including supporting schedules, attachments or lists which are supplemental to or part of the return so filed.

(c) Definition of "return information". -- The term "return information" means a taxpayer's identity, the nature, source or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments or tax payments, whether the taxpayer's return was, is being or will be examined or subject to other investigation or processing, or any other data received by, recorded by, prepared by, furnished to, or collected by the tax commissioner with respect to a return or with respect to the determination of the existence or possible existence of liability (or the amount thereof) of any person for any tax, additions to tax, penalty, interest, fine, or other imposition or offense and any part of any written determination or any background information relating to such written determination.

(d) Disclosure of returns and return information to designee of taxpayer. -- The tax commissioner may disclose a return or return information to a person designated by the taxpayer. A request for (or consent to) disclosure must be in a written document pertaining solely to the authorized disclosure. This document must be signed and dated by the taxpayer who filed the return, or to whom the return information relates. The taxpayer must also indicate in the written document:

(1) the taxpayer's identity information;

(2) the identity of the person to whom the disclosure is to be made;

(3) the type of return (or specific portion of the return) or return information (and the particular data) that is to be disclosed;

(4) the taxable year or period covered by the return or return information; and

(5) sufficient facts underlying the request for information or assistance to enable the tax department to determine the nature and extent of the information or assistance requested and the returns or return information to be disclosed in order to comply with the taxpayer's request.

A return or return information will be disclosed to the taxpayer's designee as provided by this subsection only to the extent considered necessary by the tax department to comply with the taxpayer's request for information or assistance. (Optional form is provided at page 20).

(e) Criminal penalty for violation. -- Any officer or employee of this state who violates the secrecy provisions of W. Va. Code § 11-10-5, is subject to criminal sanctions.

To: The West Virginia State Tax Commissioner

Authorization to Release Information

Name of taxpayer ______________________________

Address ______________________________

City, Town, Post Office ______________________________

File No. or Social Security No. ______________________________

The above named taxpayer does hereby waive the secrecy provisions of West Virginia Code § 11-10-5(e) to the following extent.

1. Person to whom the information may be released:

   Name: ______________________________

   Capacity: ______________________________

   Address: ______________________________

2. Effective period of waiver: (check one and complete)

   ____ ______________________ to ______________________
   month day year month day year

   ____ until my liability for West Virginia taxes is liquidated

   ____ (other; explain) ______________________________

   ____

3. Taxes to which this waiver applies: ______________________________

   ____

   ____

4. Persons and businesses to which this waiver applies:

   ____

   ____

   ____

TPA Reg. § 7. TIMELY FILING AND PAYING.

(a) Delivery in person. -- If any return, claim, statement, or other document required to be filed, or any payment required to be made within a prescribed period or on or before a prescribed date, is delivered in person on or before such date to the tax commissioner, or the appropriate division or officer of the tax department, at Charleston, West Virginia, during normal business hours of the tax department, it shall be timely filed. Until further notice, the location of the collecting divisions are:

(1) Business Tax Division
Capitol Building, Room W-417

(2) Division of Excise & License Taxes
Building 5, Room 109

(3) Inheritance Tax Division
Capitol Building, Room W-409

(4) Personal Income Tax
Capitol Building, Room W-417

(5) Mailing Address

West Virginia State Tax Department
(Administering Division)
Capitol Building
Charleston, West Virginia 25305

(b) Timely mailing. -- If any return, claim, statement or other document, required to be filed, or any payment required to be made within a prescribed period or on or before a prescribed date under authority of the provisions of any article of this chapter imposing any tax administered under this article is after such period or such date, delivered by United States mail to the tax commissioner or the state tax department, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document or payment is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be, provided the following mailing requirements are met:

(1) The postmark date must fall within the prescribed period or on or before the prescribed date for filing (including any extension granted for such filing) of the return, claim, statement or other document, or for making the payment (including any extension granted for such payment), and

(2) The return, claim, statement, other document or payment must, within the time prescribed in subparagraph (1), be deposited in the mail in the United States, in an envelope or other appropriate wrapper, postage prepaid, properly addressed to:

West Virginia State Tax Department
Capitol Building, Room W-300
Charleston, West Virginia 25305

(c) Postmarks. -- Subsection (b) shall apply only to postmarks made by the United States Postal Service. Subsection (b) shall not apply to postmarks made by privately owned or leased postage meters. In these instances, date of actual receipt by the tax department shall be deemed date of filing.

(d) Registered and certified mailing. -- For purposes of this section, if any return, claim, statement, or other document or payment is sent by United States registered or certified mail, the date of registration or certification shall be deemed the postmark date.

(e) Last date for filing or payment. -- The last date for timely filing or timely making payment shall include any extension of time authorized by law or regulation and any extension of time granted in writing by the tax commissioner.

(f) Time for performance of act where last day falls on Saturday, Sunday or legal holiday. -- When the last day for performing any act falls on Saturday, Sunday or a legal holiday, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday. For purposes of this subsection, the last day for the performance of any act shall be determined by including any authorized extension of time; and the term "legal holiday" means a legal holiday in this state.

TPA Reg. § 8. SUBPOENA AND SUBPOENA DUCES TECUM.

(a) Subpoenas. -- The tax commissioner is authorized by statute to issue subpoenas to compel the attendance of any person rendering a tax return, the attendance of any person having knowledge of the matters contained in any tax return, and the attendance of any person having knowledge of any matter required to be included in any tax return.

(b) Subpoenas duces tecum. -- The tax commissioner is authorized to issue subpoenas duces tecum to compel the production of books, records and documents.

(c) Procedure.

(1) Subpoenas and subpoenas duces tecum are issued in the name of the tax commissioner.

(2) All subpoenas and subpoenas duces tecum must be served by personal service at least five (5) days prior to the date the witness is to appear or papers are to be produced.

(3) Service of the subpoenas and subpoenas duces tecum is the responsibility of the tax commissioner.

(d) Relief from subpoena. -- Before the time specified for compliance with a subpoena or subpoena duces tecum, the person served may file a motion for relief with a circuit court having jurisdiction to issue relief. These courts include:

(1) the circuit court of the county in which the person served resides;

(2) the circuit court of the county in which the person served has his or its principal place of business or is employed;

(3) the circuit court of the county in which the person was served.

The circuit court may grant any relief prescribed under Rule 45 of the West Virginia Rules of Civil Procedure for Trial Courts of Record.

(e) Enforcement of subpoena. -- In case of any disobedience or neglect of a subpoena or subpoena duces tecum, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, obedience may be compelled by attachment proceedings for contempt brought in the circuit court of Kanawha county, or the circuit court of the county in which the person resides, has his or its principal place of business or is employed.

TPA Reg. § 9. MATHEMATICAL ERROR.

(a) General. -- When it appears to the tax commissioner that the taxpayer has made a mathematical error (including an overstatement of the credit for the amount paid as estimated tax), the tax commissioner shall correct such error and notify the taxpayer, in writing, of the deficiency. The taxpayer shall have fifteen (15) days after receipt of such notice within which to pay the amount of tax, additions to tax and interest due. If the taxpayer fails to pay such deficiency within fifteen (15) days, the tax commissioner shall make an assessment of such deficiency in accordance with section seven and shall give the taxpayer written notice thereof.

(b) "Mathematical error" defined. -- The term "mathematical error" means:

(1) an error in addition, subtraction, multiplication, or division shown on any return.

(2) an incorrect use of any table provided by the tax department with respect to any return, if such incorrect use is apparent from the existence of other information on the return.

(3) any entry on a return of an item which is inconsistent with another entry of the same or another item on such return.

(4) an overstatement of the credit for the amount paid as estimated tax.

TPA Reg. § 10. ASSESSMENTS.

(a) General. -- The tax commissioner is authorized to make an assessment whenever he believes that any tax administered under the West Virginia Tax Procedure and Administration Act has been insufficiently paid by the taxpayer, either because the taxpayer has failed to properly remit the tax, or has failed to make a return, or has made a return which is incomplete, deficient or otherwise erroneous. The amount of tax assessed may be estimated or determined after investigation or audit.

(b) Assessment to recover erroneous refund or credit. -- If the tax commissioner believes that an erroneous refund has been made or an erroneous credit has been established, he may proceed to investigate and may issue an assessment to recover the amount of such refund or credit.

(c) Delegation of authority. -- The tax commissioner may from time to time, pursuant to W. Va. Code § 11-1-2a, delegate authority to issue assessments (or amended assessments) to the director of the division of the tax department responsible for administration and collection of the tax.

(d) Amended assessment. -- An amended assessment may be issued whenever it is determined by the tax department that an assessment is improper or incomplete in any material respect.

(e) Notice of assessment. -- A notice of assessment (or amended assessment) shall be served on the taxpayer by personal service or by certified mail.

(f) Finality of assessment. -- Unless a petition for reassessment is filed within sixty (60) days after date the taxpayer is served with notice of the assessment (or amended assessment), it becomes final and is not subject to either administrative or judicial review.

(g) Amount due. -- The amount of an assessment (or amended assessment) that becomes final, including any interest or additions to tax that accrue after date the assessment or amended assessment was issued, is due and payable on the day following the date upon which the assessment (or amended assessment) becomes final.

(h) Interest on assessments. -- Interest at the rate of 8% per year continues to accrue during the hearing and appeals process. Taxpayer may elect to pay the amount of the assessment (including additions to tax, penalties and interest) under protest at the time he files his petition for reassessment. This will prevent the accrual of future interest on the amount assessed. If subsequently the assessment is reduced, interest and additions to tax will be recalculated and any overpayment refunded to the taxpayer without interest.

(i) Cross references.

TPA Reg. § 11.	Petition for reassessment
TPA Reg. § 11.01.	Contents of petition for reassessment
TPA Reg. § 11.02.	Optional forms for petition
TPA Reg. § 13.	Administrative hearing
TPA Reg. § 16.	Interest
TPA Reg. § 17.	Additions to tax

TPA Reg. § 11. PETITION FOR REASSESSMENT.

(a) General. -- When a taxpayer receives a tax assessment and desires to object to the assessment of tax, additions to tax or penalty, or any part thereof, a written petition for reassessment must be filed within sixty (60) days after date he was served with notice of the assessment. Either the taxpayer or his duly authorized representative who has knowledge of the facts, may prepare and file this petition.

(b) Filing of petition. -- The original petition for reassessment and one copy must be delivered to the Office of Hearings and Appeals personally or postmarked and sent by certified mail within sixty (60) days after date the taxpayer is served with notice of the assessment.

Until further notice, all petitions for reassessment should be addressed to:

State Tax Department
P. O. Drawer 2389
Charleston, West Virginia 25328

(c) Finality of assessment where taxpayer fails to file petition timely. -- If the taxpayer fails to file a petition for reassessment, which substantially complies with TPA Reg. § 11.01, within the sixty (60) day limit, the assessment becomes final and is not subject to either administrative or judicial review. The full amount of the assessment plus any additional interest and additions to tax which accrue after date the assessment is issued, is due and payable on the day following the date upon which the assessment becomes final.

(d) Cross references.

TPA Reg. § 11.01.	Contents of petition for reassessment
TPA Reg. § 11.02.	Optional forms for petition
TPA Reg. § 13.	Administrative hearings
TPA Reg. § 16.	Interest
TPA Reg. § 17.	Additions to tax

TPA Reg. § 11.01. CONTENTS OF PETITION FOR REASSESSMENT.

(a) General. -- The petition for reassessment must be in writing and must fully explain the reasons why the taxpayer objects to the assessment. No telegram, telephone call or similar communication will be accepted as a petition for reassessment.

(b) Content of petition. -- A petition for reassessment must contain the following:

(1) a caption substantially in the following form:

TO THE STATE TAX COMMISSIONER
OFFICE OF HEARINGS AND APPEALS
PETITION FOR REASSESSMENT BY
(Taxpayer's name)

(2) A statement of what kind of tax was assessed, i.e., business and occupation tax, personal income tax, inheritance tax, etc., the amount of the assessed tax, additions to tax, penalty and interest and the period (dates) for which the assessment was made. (This information may be obtained from the assessment.)

(3) A clear statement of each item included in the assessment that the taxpayer objects to. Each item should be numbered separately or, in the alternative, the taxpayer may object generally to all items when a similar reason(s) exists.

(4) A clear statement of facts and reasons why the taxpayer objects to the listed items or to the items in general.

(5) A statement of the relief requested by the taxpayer (that is, the assessment be set aside or the additions to tax be removed, etc.).

(6) The signature of the taxpayer or his duly authorized representative.

(7) A verification under oath before a notary public.

(8) A copy of the assessment attached to the original petition for reassessment.

(c) Election of taxpayer regarding interest, additions to tax and penalties. -- The taxpayer may elect to apply the provisions of W. Va. Code §§ 11-10-17, 11-10-18 and 11-10-19 (relating to interest, additions to tax and penalties) to tax periods ending prior to July 1, 1978. This election must be made within sixty (60) days after date the taxpayer is served with notice of the assessment and be made in the petition for reassessment or in a separate letter.

TPA Reg. § 11.02. OPTIONAL FORMS FOR PETITION FOR REASSESSMENT.

(a) General. - An optional petition for reassessment form may accompany each assessment and may be used by the taxpayer. If the form is used, it must be filled out completely.

(b) Forms. - Three different optional petition forms have been developed which recognize the inherent differences in the types of taxes collected by the Tax Department.

(1) Optional form 1 (reprinted at page 31) may be used by any person petitioning for reassessment of a business tax, an excise tax or the employer withholding tax.

(2) Optional form 2 (reprinted at page 32) may be used by any person petitioning for reassessment of personal income tax.

(3) Optional form 3 (reprinted at page 33) may be used by any person petitioning for reassessment of inheritance and transfer taxes.

(Optional form 1)

TO THE STATE TAX COMMISSIONER
OFFICE OF HEARINGS AND APPEALS
PETITION FOR REASSESSMENT OF
BUSINESS OR EXCISE TAXES

DOCKET # ____________
(For Dept. Use Only)

In the Matter of

Taxpayer's Name ______________________ Name of tax ______________
File No. ______________________ Amount of tax ______________
Taxpayer's Business Name (if applicable) Amount of additions ______________
______________________ Amount of penalty ______________
Taxpayer's Address Amount of interest ______________
______________________ Total amount assessed ______________

The above named taxpayer against whom you have made an assessment hereby petitions for reassessment and states the following in support of such petition:

First: The taxpayer disagrees with and objects to the following items included in the assessment: (Number each item separately and attach additional sheets if needed).

Second: The following facts are offered as the taxpayer's reasons for objecting to the above-listed items: (Attach additional sheets if needed).

Third: Therefore the taxpayer requests (State the relief sought such as, the assessment be set aside or the additions to tax be waived, etc.)

Fourth: The taxpayer (elects ___) (does not elect ___) to have the provisions of W. Va. Code §§ 11-10-17, 11-10-18, 11-10-19, relating to interest, additions to tax and penalties apply to this assessment. (Check appropriate response - for explanation, see reverse side)

Taxpayer's Name or Taxpayer's Representative's Name (print or type)

____

Title and Address ______________________________
____

Telephone Number ______________________________

State of ______________________
County of ______________________

______________________, being duly sworn according to the law, deposes and says that the facts contained in this petition, including any sheets attached hereto, are true and the affiant is the taxpayer or is duly authorized to represent the taxpayer.

____
Taxpayer or Taxpayer's Representative's Signature

Sworn to and subscribed before me this ___ day of __________, 19____, at ________________. My commission expires ______________, 19_____.

____
Notary Public

NOTE - A copy of the notice of assessment must be attached to this form.

(Optional form 2)

TO THE STATE TAX COMMISSIONER
OFFICE OF HEARINGS AND APPEALS
PETITION FOR REASSESSMENT OF
PERSONAL INCOME TAX

DOCKET #____________
(For Dept. Use Only)

In the Matter of:

Taxpayer's Name ________________________

Taxpayer's Business Name (if applicable)
____

Social Security or Acct. No. ____________
Taxpayer's Address
____

Name of tax __________
Taxable period __________
Amount of tax __________
Amount of interest __________
Amount of additions __________
Amount of penalty __________
Total amount assessed ______

First: I disagree with and object to the following items in the assessment issued against me (number each item separately and attach additional sheets if more space is needed):

Second: I disagree with and object to the items listed under number one for the following reasons (attach additional sheet if more space is needed):

Third: I request the West Virginia Tax Department to make the following changes in the assessment and to set this matter for administrative hearing (attach additional sheet if more space is needed)

Taxpayer or Taxpayer's Representative's Name (print or type)

____

Title and Address ____________________________

Telephone Number ____________________________

State of ____________________
County of ____________________

________________________, being duly sworn according to the law, deposes and says that the facts contained in the petition, including any sheets attached hereto, are true and the affiant is the taxpayer or is duly authorized to represent the taxpayer.

____
Taxpayer or Taxpayer's Representative's Signature

Sworn to and subscribed before me this ___ day of __________, 19___, at ____________________. My commission expires ____________.

____
Notary Public

NOTE - A copy of the notice of assessment must be attached to this form.

(Optional form 3)

TO THE STATE TAX COMMISSIONER
OFFICE OF HEARINGS AND APPEALS
PETITION FOR REASSESSMENT OF
INHERITANCE AND TRANSFER TAXES

DOCKET #______________
(For Dept. Use Only)

In Re: The Estate of ________________________________
File No. ____

Petitioner's Name____________________________

Petitioner's Address__________________________
____
____

Amount of tax_____________
Amount of interest________
Amount of additions_______
Amount of penalty_________
Total amount assessed_____

<u>First</u>: I disagree with and object to the following items in the assessment issued against me (number each item separately and attach additional sheets if more space is needed):

<u>Second</u>: I disagree with and object to the items listed under number one for the following reasons (attach additional sheet if more space is needed):

<u>Third</u>: I request the West Virginia Tax Department to make the following changes in the assessment and to set this matter for administrative hearing (attach additional sheet if more space is needed)

<u>Fourth</u>: I (do elect ___) (do not elect ___) to have the provisions of W. Va. Code §§ 11-10-17, 11-10-18, 11-10-19, relating to interest, additions to tax and penalties apply to this assessment. (Check appropriate response - for explanation, see reverse side)

Petitioner or Petitioner's Representative's Name (print or type)

____
Title and Address____
Telephone Number____

State of __________________________
County of__________________________

___________________________, being duly sworn according to the law, deposes and says that the facts contained in the petition, including any sheets attached hereto, are true and the affiant is the petitioner or is duly authorized to represent the petitioner.

____
Petitioner or Petitioner's Representative's Signatur

Sworn to and subscribed before me this ___ day of ___________, 19___, at ___________________________. My commission expires_______________.

____
Notary Public

NOTE - A copy of the notice of assessment must be attached to this form.

TPA Reg. § 12. JEOPARDY ASSESSMENT.

(a) General. -- A jeopardy assessment may be issued for any tax (administered under W. Va. Code Article 11-10) whenever the tax department believes that collection of the tax will be jeopardized by delay.

(b) Cross references.

TPA Reg. § 12.01.	Notice of jeopardy assessment
TPA Reg. § 12.02.	Petition for reassessment
TPA Reg. § 12.03.	Extension of time to file petition
TPA Reg. § 12.04.	Form of petition
TPA Reg. § 12.05.	Posting of security

TPA Reg. § 12.01. NOTICE OF JEOPARDY ASSESSMENT.

(a) General. -- If a jeopardy assessment is issued against a taxpayer, it will be clearly marked: "JEOPARDY ASSESSMENT".

(b) Service of notice of jeopardy assessment. -- Notice of a jeopardy assessment must be served on the taxpayer either by personal service or by certified mail.

TPA Reg. § 12.02. PETITION FOR REASSESSMENT WHERE JEOPARDY ASSESSMENT ISSUED.

(a) General. -- Whenever a jeopardy assessment is issued, a petition for reassessment, or a request for an extension of time to file a petition for reassessment, must be filed within twenty (20) days after date the taxpayer is served with notice of the jeopardy assessment. A petition must be accompanied by security as provided in TPA Reg. § 12.05.

(b) Time for filing when extension granted. -- When a request for an extension of time to file a petition is granted, the petition for reassessment must be filed within fifty (50) days after date the taxpayer was served with the notice of jeopardy assessment.

(c) Finality of jeopardy assessment. -- Unless the taxpayer both timely files a petition for reassessment and timely posts the required security, the jeopardy assessment becomes final and is not subject to either administrative or judicial review. Where a petition for reassessment is timely filed but the required security is not posted within the time period allowed for filing of the petition, the jeopardy assessment becomes final and is not subject to review. The full amount of the jeopardy assessment plus any additional interest and additions to tax is due and payable on the day following the date upon which the assessment becomes final.

(d) Cross references.

TPA Reg. § 12.03.	Extension of time for filing petition
TPA Reg. § 12.04.	Form of petition
TPA Reg. § 12.05.	Posting of security.

TPA Reg. § 12.03. EXTENSION OF TIME FOR FILING PETITION FOR REASSESSMENT WHEN JEOPARDY ASSESSMENT ISSUED.

(a) General. -- A thirty (30) day extension of time to file a petition for reassessment where a jeopardy assessment has been issued may be requested by the taxpayer.

(b) Form. - No particular form is required for this request except that it must be in writing and must explain in detail why an extension of time is necessary. A letter will be sufficient.

(c) Time for filing. -- Both the request for an extension of time and the required security must be filed within twenty (20) days after date taxpayer is served with notice of the jeopardy assessment. When both are filed within this twenty (20) day time period, the extension of time will automatically be granted.

(d) Failure to post security. -- A request for an extension of time filed during the twenty (20) day filing period will not extend the time for filing the petition for reassessment unless the required security is also posted within the twenty (20) day filing period.

(e) Late filed. -- Filing of a request for extension of time after the twenty (20) days for filing has expired will not extend the time even where the required security is also posted with the extension request.

TPA Reg. § 12.04. FORM OF PETITION FOR REASSESSMENT.

The form and contents of a petition for reassessment of a jeopardy assessment are identical to that required for other assessments. Requirements listed in TPA Reg. § 11.01 and the optional forms in TPA Reg. § 11.02 are applicable to the petition for reassessment filed in response to a jeopardy assessment.

TPA Reg. § 12.05. POSTING OF SECURITY.

If in response to a jeopardy assessment a petition for reassessment is filed, or if a request for extension of time is made, the petition or request must be accompanied by security in the form of a bond with corporate surety, or a cashier's check or certified check, or other security as the tax commissioner may deem adequate. Generally, this security must have a market value of not less than the amount of the jeopardy assessment. A taxpayer feeling aggrieved by this requirement may contact the Office of Hearings and Appeals (telephone number 304/348-8842) to discuss the amount of security deemed necessary by the department to insure compliance with the applicable provisions of Chapter 11 of the West Virginia Code. For good and sufficient cause, the hearing examiner may set the required security at a lesser amount. Any petition or request for extension which is not accompanied by the required security, will not be subject to administrative review. The jeopardy assessment will become final.

TPA Reg. § 13. ADMINISTRATIVE HEARINGS.

(a) General. -- The tax department's office of hearings and appeals will set a date, time and place for an administrative hearing upon receipt of a timely filed petition for reassessment, petition for refund or other request for an administrative hearing authorized by statute or regulation. This hearing must be held within ninety (90) days from date of the filing of the petition or other request for hearing unless continued by agreement of the parties or by the tax commissioner for good cause. The petitioner will receive written notice of the hearing at least twenty (20) days in advance of the hearing date.

(b) Location of Hearings. -- Hearings are usually held at the Office of Hearings and Appeals which currently is located at 1217 Quarrier Street, Charleston, West Virginia. Hearings will also be held four (4) times a year in the Wheeling area and twice (2) a year in the Martinsburg area. Taxpayers who want their hearing to be docketed in Wheeling or Martinsburg should so advise the Office of Hearings and Appeals. The frequency of regional hearings will depend upon the number of petitions docketed from these areas and the interest of taxpayers in taking advantage of the regional hearing concept.

(c) Cross References.

TPA Reg. § 13.01.	Appearances
TPA Reg. § 13.02.	Absence of taxpayer
TPA Reg. § 13.03.	Continuances
TPA Reg. § 13.04.	Hearing procedure
TPA Reg. § 13.05.	Record
TPA Reg. § 13.06.	Decision
TPA Reg. § 13.07.	Payment of amount due
TPA Reg. § 14.	Appeal

TPA Reg. § 13.01. APPEARANCES.

(a) Hearing Examiner. -- The administrative hearing is presided over by a hearing examiner designated by the tax commissioner.

(b) Petitioner. -- The petitioner may represent himself or be represented by some other person or persons of his choosing. The petitioner does not have to be represented by an attorney, but the petitioner or his representative will be expected to present evidence and argument in support of his petition.

(c) Administering division. -- The administering division of the tax department will be represented by legal counsel. In most instances, an in-house accountant or other employee with knowledge of the matter will also be present.

(d) Request for presence of tax examiner who performed the audit. -- The petitioner may request the presence of the tax examiner who performed the audit. Such request should be made in writing to the hearing examiner at least two (2) weeks prior to the hearing date, and must set forth with particularity the reason(s) for which presence of the tax examiner is desired. The hearing examiner will decide whether presence of the tax examiner is necessary. Requests not made at least two (2) weeks prior to the date of hearing will not be granted.

(e) Subpoena of witnesses. -- The tax commissioner may issue a subpoena to compel the appearance of a witness at the administrative hearing. A subpoena must be served by personal service on the witness at least five (5) days before the return date thereof. This subpoena may be quashed or enforced as provided in TPA Reg. § 8.

TPA Reg. § 13.02. ABSENCE OF PETITIONER, HIS REPRESENTATIVE OR REPRESENTATIVES OF THE DEPARTMENT.

(a) General. -- Absence of the petitioner or his representative at the scheduled hearing will normally not be reason for delay of the hearing. The hearing will proceed and the case will be regarded as submitted on the part of petitioner.

(b) Emergency situations. -- Emergency situations such as weather, mechanical car problems and illness (of the petitioner, petitioner's representative, any material witness, representatives of the tax department or critical illness of any member of the immediate family of these individuals) should promptly be brought to the attention of the hearing examiner. Upon review of the situation, the hearing examiner will determine if good cause exists to delay or reschedule the hearing.

TPA Reg. § 13.03. CONTINUANCES.

(a) General. -- All requests or motions to continue an administrative hearing to another date must be made in writing and sent to the Office of Hearings and Appeals. A hearing will not be delayed or postponed unless the motion to continue is timely made and sets forth facts evidencing good and sufficient cause. When a continuance is granted, the petitioner will be notified of the new date and time for the hearing.

(b) Timeliness. -- A motion to continue should be filed as soon as possible after receipt of the notice of hearing. Requests for continuance made near the time of the scheduled hearing will be closely evaluated and may be denied as untimely.

(c) Good and sufficient cause. -- Conflicting engagements of counsel or the petitioner are not good and sufficient cause for a continuance unless the motion to continue is promptly filed after notice of the hearing has been received by counsel or the taxpayer. Continuances will not be granted solely for the reason that the hearing would interfere with the work load of petitioner's representative.

TPA Reg. § 13.04. HEARING PROCEDURES.

(a) Hearings closed to the public. -- Administrative hearings are not open to the public. Oral testimony and written evidence is confidential under W. Va. Code § 11-10-5(e), except to the extent the petitioner voluntarily waives his right to confidentiality. To the extent that persons invited by the petitioner to observe the proceedings unduly burden the facilities available for the hearing, the presiding hearing examiner may limit the number of observers present.

(b) Conduct of hearings. -- The presiding hearing examiner shall have the duty to conduct full, fair and impartial hearings; to take appropriate action to avoid unnecessary delay in the disposition of hearings, and to maintain order; and he shall possess all powers necessary to that end, including the following: to administer oaths and affirmations; to provide methods of discovery; to receive evidence and rule upon all objections and motions that do not involve final determination of proceedings; and to take such other action as may be necessary and appropriate to the discharge of his duties, consistent with the statutory authority and with the rules, regulations and policies of the Department.

(c) Disorderly conduct. -- Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at a hearing before the presiding hearing examiner shall constitute grounds for immediate exclusion of such person from the hearing by the presiding hearing examiner.

(d) Filing of exhibits before hearing. -- All documents and other exhibits which the petitioner desires to introduce as evidence at the hearing must be submitted by the petitioner or his representative and received by the Office of Hearings and Appeals not less than five (5) working days prior to the hearing at which they are to be introduced. The presiding hearing examiner may, in his discretion, waive this requirement if the document or exhibit is of a nature which will facilitate ready cross-examination concerning it. This rule does not apply to the filing of briefs or memorandums of law.

(e) Briefs or memorandums of law.

(1) General. -- The petitioner or legal counsel the the tax department may file a brief or memorandum of law in any hearing. The hearing examiner may require the filing of briefs by the parties. Requests for filing of briefs or memorandums of law shall be made before or at the conclusion of the taking of evidence at a hearing. The requirements of this rule may be altered by agreement of the parties with the consent of the hearing examiner.

(2) Seriatim briefs. -- Unless otherwise ordered by the presiding hearing examiner, the petitioner shall have thirty (30) days after the hearing, or after receipt of the transcript of the proceedings if one is obtained, in which to file two (2) copies of its brief with the Office of Hearings and Appeals which shall in turn supply a copy to counsel for the department. Counsel for the department shall have thirty (30) days after receiving said

brief in which to file two (2) copies of its brief with the Office of Hearings and Appeals which shall then serve a copy thereof on the petitioner. The petitioner shall then have fifteen (15) days in which to file its reply brief with the Office of Hearings and Appeals.

(3) Simultaneous briefs. -- When in the judgment of the presiding hearing examiner the circumstances or exigencies require, he may direct that briefs be filed simultaneously or otherwise. The presiding hearing examiner may require, after having given due regard to the nature of the proceeding, the magnitude of the record, and the complexity or importance of the issues involved, that the time for filing of briefs shall commence running at the close of the hearing.

(f) Filing of exhibits or briefs after hearing. -- Failure of either the petitioner or the tax department to file any exhibit, brief, reply brief or memorandum of law on or before the date set by the hearing examiner for the filing thereof shall be deemed to be waiver of the right to file such exhibit, brief, reply brief or memorandum of law unless a written request for an extension of time is filed with the hearing examiner on or before the filing date and approved by him.

(g) Oral argument. -- Oral argument may be presented in addition to or in lieu of filing of briefs. When, in the opinion of the presiding hearing examiner, time permits and the nature of the hearing and the complexity or importance of the issues of law or fact involved warrant, the hearing examiner may, either on his own motion or at the request of the petitioner or legal counsel for the department at or before the close of the hearing, allow and fix a time for the presentation of oral argument, imposing such limits of time on the argument appropriate to the proceeding. Such arguments shall in any event be transcribed and bound with a transcript of testimony.

(h) Making of record. -- Petitioner is required to present any evidence that he believes pertinent to his case at the administrative hearing. West Virginia case law holds that upon appeal to the courts, only the record made at the administrative hearing can be considered. There is no trial de novo (new trial).

(i) Burden of proof.

(1) If the hearing is on a petition for reassessment, the burden of proof is on the petitioner to show that the assessment is incorrect and contrary to law, either in whole or in part.

(2) If the hearing is on a petition for refund or credit, the burden of proof is on the petitioner to prove his legal entitlement to a refund or credit and the amount thereof.

TPA Reg. § 13.05. <u>RECORD OF HEARING</u>.

(a) <u>General</u>. -- All oral testimony and written evidence presented at the administrative hearing shall be made part of the record. Oral testimony is recorded by mechanical means, by use of a court reporter, or by both. Written evidence is made part of the record by exhibit.

(b) <u>Transcript</u>. -- A transcript of the testimony will be furnished by the department to the parties only after an appeal is taken to the circuit courts except where the hearing examiner believes that due to the complexity of the case, transcripts should be made available before briefs are filed. If the petitioner wants a copy of the transcript at any time before an appeal is filed, he should contact the hearing examiner who presided at the administrative hearing, to discuss the necessary arrangements. If a petitioner requests a transcript of a hearing before the filing of briefs, the court reporter or other person preparing the transcript shall deliver all copies to the Office of Hearings and Appeals which shall in turn simultaneously send a copy of the transcript to the petitioner or his representative and to the legal counsel for the tax department.

(c) <u>Recording of hearing</u>. -- Only tax department recording equipment or court reporters hired by the tax department are allowed to record the hearing. No other recording equipment is permitted.

TPA Reg. § 13.06. <u>ADMINISTRATIVE DECISION</u>.

(a) <u>General</u>. -- After the administrative hearing is held and the parties have filed (or waived the right to file) any exhibits which the hearing examiner permits during the hearing to be filed after the hearing, and any briefs, reply briefs or memorandums of law required by the hearing examiner, the case shall be deemed submitted for determination. Only under unique or extremely unusual circumstances will the record be reopened after a case is submitted. The hearing examiner will prepare a written decision, including findings of fact and conclusions of law, which he will recommend to the tax commissioner. The tax commissioner after review of the proposed decision and the record or a portion thereof, shall issue his decision within a reasonable time after the case is deemed submitted for determination.

(b) Delegation of authority to issue decision. -- Where the tax commissioner determines that he has or may have a conflict of interest, authority to issue the administrative decision will be delegated under W. Va. Code § 11-1-1, to the chief hearing examiner or the hearing examiner who presided over the administrative hearing.

(c) Notice of decision. -- Notices of administrative decisions must be served on the taxpayer personally or by certified mail.

(d) Finality. -- The administrative decision issued by the tax commissioner becomes final and conclusive and not subject to either administrative or judicial review unless the taxpayer files an appeal to the circuit courts of this state within sixty (60) days after being served with notice of the administrative decision.

(e) Release of decision. -- The tax commissioner may, in his discretion, release a copy of his administrative decision, or a summary thereof, to the public. All identifying characteristics or facts about the taxpayer will be omitted or modified so as to not disclose the name of the taxpayer unless the taxpayer waives in writing his right to secrecy.

TPA Reg. § 13.07. PAYMENT OF AMOUNT DUE UNDER THE ADMINISTRATIVE DECISION.

(a) Amount due the state. -- The amount due the state under an administrative decision, plus any additional interest and additions to tax that have accrued, becomes due and payable on the day following the date upon which the decision becomes final.

(b) Amount due the taxpayer. -- The amount due the taxpayer under an administrative decision will promptly be refunded or credited at the election of the taxpayer.

(c) Cross References.

TPA Reg. § 16(a).	Interest on underpayments
TPA Reg. § 16(d).	Interest on overpayments

TPA Reg. § 14. APPEAL.

(a) Right of appeal. -- A taxpayer may appeal the administrative decision of the tax commissioner issued under TPA Reg. § 13.06, by taking an appeal to the circuit courts of this state within sixty (60) days after being served with notice of the administrative decision.

(b) Venue. -- The appeal may be taken in the circuit court of any county:

(1) wherein the activity taxed 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 the circuit court of Kanawha county.

(c) 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. The surety must be qualified to do business in this state. These bonds shall be conditioned that the taxpayer shall perform the orders of the court. The penalty of this bond shall be not less than the total amount of tax, additions to tax, penalties and interest for which the taxpayer was found liable in the administrative decision of the tax commissioner. Notwithstanding the aforegoing and in lieu of such bond, the tax commissioner may, upon a sufficient showing by the the taxpayer, certify to the clerk of the circuit court that the assets of the taxpayer subject to the lien imposed by W. Va. Code § 11-10-12, or other indemnification, are adequate to secure performance of the orders of the court.

(d) Review by the court. -- The court shall hear the appeal and determine anew all questions submitted to it on appeal from the determination of the tax commissioner. In such appeal a certified copy of the tax commissioner's notice of assessment and administrative decision thereon shall be admissible and shall constitute prima facie evidence of the tax due under the provisions of those articles of this chapter to which this article is applicable. The court shall render its decree thereon and a certified copy of said decree shall be filed by the clerk of the court with the tax commissioner who shall then correct the assessment in accordance with the decree. An appeal may be taken by the taxpayer or the tax commissioner to the supreme court of appeals of this state.

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

TPA Reg. § 15. REFUNDS AND CREDITS.

(a) General. -- Any person claiming to have overpaid any tax administered under W. Va. Code § 11-10 including any additions to tax, penalties or interest may file a claim for refund or credit with the tax commissioner. The provisions of W. Va. Code § 11-10-14 apply to all refunds or credits sought after July 1, 1978, regardless of whether the claim is for a tax period ending prior to that date. Payments of estimated tax shall not be subject to refund or credit prior to the filing of the annual tax return.

(b) Final assessments or administrative decisions. -- A person against whom an assessment or an administrative decision becomes final shall not be entitled to file a claim for refund or credit of the amount of the assessment or administrative decision:

(1) If a taxpayer pays the amount of an assessment or administrative decision during the sixty (60) day appeal period but fails to timely file a petition for reassessment or to make an appeal, the assessment or administrative decision becomes final just as if no payment had been made.

(2) If a taxpayer pays the amount of the assessment and subsequently files a claim for refund or credit, both occurring within the sixty (60) days during which a petition for reassessment may be filed, the claim for refund or credit will be treated as a petition for reassessment under TPA Reg. § 11 and the petitioner may be required to file an amended petition for reassessment which conforms with the requirements of TPA Reg. § 11.01.

(c) Cross references.

TPA Reg. § 15.01.	Time period for filing claim
TPA Reg. § 15.02.	Claim for refund or credit
TPA Reg. § 15.03.	Determination of claim
TPA Reg. § 15.04.	Petition for refund or credit
TPA Reg. § 15.05.	Contents of petition
TPA Reg. § 15.06.	Optional forms for petitions
TPA Reg. § 15.07.	Administrative hearing on petitions

TPA Reg. § 15.01. TIME PERIOD FOR FILING CLAIM.

(a) General rule. - The allowable time period for filing a claim for refund or credit is determined as follows and summarized in the chart below:

REFUNDS

Tax Period	Maximum Time to File Claim for Refund
Ending prior to July 1, 1967	3 years from date tax paid
July 1, 1967 to December 31, 1978	5 years from date tax paid
January 1, 1979 to December 31, 1979	4 years from date tax paid paid
Ending after December 31, 1979	3 years from date return due or 2 years from date tax paid, whichever is later

(for exceptions see subsection (b))

(1) For tax periods ending after December 31, 1979, a refund may be granted only if a claim for refund or credit is filed within three years after the due date of the return or within two years from the date the tax was paid, whichever expires later.

(2) For tax periods ending after December 31, 1978, but prior to January 1, 1980, a refund may be granted only if a claim for refund or credit is filed within four years from date the tax was paid.

(3) For tax periods ending after June 30, 1967, but prior to January 1, 1979, a refund may be granted only if a claim for refund or credit is filed within five years from date the tax was paid.

(4) For tax periods ending prior to July 1, 1967, a refund may be granted only if a claim for refund of credit is filed within three years from date the tax was paid.

(b) Exceptions.

(1) Claims made under W. Va. Code § 11-14-10, for refund of gasoline and special fuels excise tax erroneously or illegally collected, or for refund of tax on gallonage lost or exported, must be filed within three (3) years from the end of the month in which the tax was illegally collected, the gallonage was exported or the gallonage was lost by casualty. Claims for refund of tax on gallonage lost through evaporation must be filed within three (3) years from the end of the year in which the evaporation occurred.

(2) Claims made under W. Va. Code § 11-14-11, for refund of gasoline and special fuels excise tax paid on gasoline or special fuels consumed in certain nonhighway uses, must be filed within four (4) months from the month of purchase or delivery of such gasoline or special fuels. Where the claim is for refund of tax paid on fuel consumed to operate tractors and gas engines or threshing machines, the claim must be filed within twelve (12) months from the month of purchase or delivery.

(3) Claims made under W. Va. Code § 11-14-11a, for refund of gasoline and special fuels excise tax paid on gasoline or special fuels used by volunteer fire departments, nonprofit ambulance services and emergency rescue services, must be filed no later than the thirty-first (31st) day of August for purchase of fuel made during the preceding fiscal year ending the thirtieth (30th) day of June.

(4) Claims made under W. Va. Code § 11-14-12, for partial refund of gasoline and special fuels excise tax paid on gasoline or special fuels consumed in buses, must be filed within four (4) months from the month of purchase or delivery of such gasoline or special fuels.

(5) Claims made under W. Va. Code § 11-14A-11, for refund of motor carrier road tax, must be filed within thirteen (13) months from the close of the quarter in which the tax was paid or the credit provided for in W. Va. Code § 11-14A-9, was allowed.

TPA Reg. § 15.02. <u>CLAIM FOR REFUND OR CREDIT</u>.

(a) <u>General</u>. -- No refund or credit shall be made unless the taxpayer has timely filed a claim for refund or credit. Any claim for refund or credit not timely filed shall not be construed to be or constitute a moral obligation of the State of West Virginia.

(b) Form of claim. -- A claim for refund or credit must be in writing. It must identify:

(1) the type of tax,

(2) the amount of tax claimed to have been overpaid,

(3) the date when such tax was paid, and

(4) the facts upon which the taxpayer relies.

(c) Tax returns which constitute claims. -- The following tax returns which show on their face an overpayment of tax will be treated as a claim for refund or credit, without the taxpayer having to file a separate paper.

(1) personal income tax returns,

(2) corporation net income tax returns,

(3) annual business and occupation tax returns,

(4) distributor gasoline and special fuels tax returns,

(5) soft drinks tax returns.

No other tax returns which show an overpayment of tax on their face will be treated as a claim for refund or credit.

(d) Filing of claim. -- A claim for refund or credit should be addressed to the division of the tax department administering the tax. Claims may be filed in person or by mailing them to:

West Virginia State Tax Department
(Administering Division)
Capitol Building
Charleston, West Virginia 25305

TPA Reg. § 15.03. DETERMINATION OF CLAIM FOR REFUND OR CREDIT.

(a) General. -- The taxpayer's claim for refund or credit shall be reviewed and a determination made. The taxpayer shall be notified of the determination in writing. Determination of a claim for refund of personal income tax or corporation net income tax shall be made by the tax department within six (6) months after date the claim is filed. All other refund claims filed pursuant to W. Va. Code § 11-10-14 shall be determined by the tax department within ninety (90) days after date the claim is filed.

(b) Exceptions. -- The ninety (90) day time period for determining claims shall not apply to claims for refund or credit of:

(1) gasoline and special fuels excise tax claimed under W. Va. Code §§ 11-14-10, 11-14-11, 11-14-11a, or 11-14-12; or

(2) motor carrier road tax claimed under W. Va. Code §§ 11-14A-9 or 11-14A-11.

As to these taxes, no time period is prescribed.

TPA Reg. § 15.04. PETITION FOR REFUND OR CREDIT.

(a) General.

(1) Where the taxpayer disagrees with the decision of the tax department on his claim for refund or credit, or where the tax department has not determined the taxpayer's claim within the time prescribed in TPA Reg. § 15.03, the taxpayer may file a petition for refund or credit.

(2) Where the department denies a claim for refund or credit, either in whole or part,

the petition for refund or credit must be filed within sixty (60) days after date the taxpayer is served with notice of the decision concerning his claim for refund or credit.

(b) Filing of petition. -- The original petition for refund and one copy must be delivered to the Office of Hearings and Appeals personally or postmarked and sent by certified mail within the applicable time period.

Until further notice, all petitions for refund should be addressed to;

State Tax Department
Office of Hearings and Appeals
P. O. Drawer 2389
Charleston, West Virginia 25328

TPA Reg. § 15.05. CONTENTS OF A PETITION FOR REFUND OR CREDIT.

(a) General. -- The petition for refund or credit must be in writing and must fully explain the reasons why the claim was made, or why the taxpayer objects to the commissioner's determination. No telegram, telephone call or similar communication will be accepted as a petition for refund or credit.

(b) Content of petition. -- A petition for refund or credit must contain the following:

(1) A caption substantially in the following form:

TO THE STATE TAX COMMISSIONER
OFFICE OF HEARINGS AND APPEALS
PETITION FOR REFUND
(Taxpayer's name) ____________

(2) A statement identifying the kind of tax overpaid, the amount of the overpaid tax, including any additions to tax, penalty or interest, and the period (dates) for which the overpayment was made.

(3) A clear statement of each item included in the determination that the taxpayer objects to. Each item should be numbered separately or, in the alternative, the taxpayer may object generally to all items when a similar reason(s) exists. (To be included only when the taxpayer disagrees with the initial determination of the claim for refund or credit).

(4) A clear statement of facts and reasons why the taxpayer objects to the listed items or to the items in general. If no timely determination of the claim for refund or credit has been made, taxpayer should state when the claim was submitted, attach a copy of the initial claim, and supply a clear statement of facts and reasons why the overpayment should be refunded or allowed as a credit.

(5) A statement of the relief requested by the taxpayer (that is, the refund be granted with interest).

(6) The signature of the taxpayer or his duly authorized representative.

(7) A verification under oath before a notary public.

(8) A copy of the determination (if one has been made) attached to the original petition for refund.

TPA Reg. § 15.06. <u>OPTIONAL FORMS FOR PETITIONS FOR REFUND OR CREDIT</u>.

(a) An optional form petition for refund or credit will accompany a denial of the claim for refund or credit and may be used by the taxpayer. If such form is used, it must be completely filled out.

(1) Optional form 4 (reprinted at page 60) may be used by any person petitioning for refund or credit of a business tax, an excise tax or the employer withholding tax;

(2) Optional form 5 (reprinted at page 61) may be used by any person petitioning for refund or credit of personal income tax;

(3) Optional form 6 (reprinted at page 62) may be used by any person petitioning for refund or credit of inheritance and transfer taxes.

(b) An optional form petition for refund or credit is available upon request when determination of a claim is not timely made by the department. If such form is used, it must be completely filled out.

(1) Optional form 7 (reprinted at page 63) may be used by any person petitioning for refund or

credit of a business tax, an excise tax or the employer withholding tax;

(2) Optional form 8 (reprinted at page 64) may be used by any person petitioning for refund or credit of personal income tax;

(3) Optional form 9 (reprinted at page 65) may be used by any person petitioning for refund or credit of inheritance and transfer taxes.

(Optional form 4)

TO THE STATE TAX COMMISSIONER
OFFICE OF HEARINGS AND APPEALS
PETITION FOR REFUND OR CREDIT OF BUSINESS OR EXCISE TAXES

DOCKET #_________
(for Dept. Use Only)

In the Matter of

Taxpayer's Name ____________________	Name of tax ____________
	Amount of tax ____________
Taxpayer's Business Name (if applicable)	Amount of additions ____________
____________________	Amount of penalty ____________
File No. ____________________	Amount of interest ____________
Taxpayer's Address ____________________	Total amount overpaid ____________
____________________	Date of overpayment ____________

The above named taxpayer having filed a claim for refund or credit and not having not received a determination hereby petitions for refund or credit and states the following in support of such petition:

First: The taxpayer states that he has overpaid taxes for the following periods and has claimed a refund or credit or which has not been timely determined.

Second: The following facts are offered as the taxpayer's reasons for claiming the refund or credit: (Attach additional sheets if more space is needed).

Third: Therefore the taxpayer requests (State the relief sought such as, the refund be granted or credit established)

Taxpayer or Taxpayer's Representive's Name (print or type)

____

Title and Address ______________________________

____

Telephone Number ______________________________

State of ____________________
County of ____________________

____________________, being duly sworn according to the law, deposes and says that the facts contained in this petition, including any sheets attached hereto, are true and the affiant is the taxpayer or is duly authorized to represent the taxpayer.

____
Taxpayer or Taxpayer's Representative's Signature

Sworn to and subscribed before me this ____ day of __________, 19____, at ____________________. My commission expires _______________, 19_____.

____
Notary Public

(Optional form 5)

TO THE STATE TAX COMMISSIONER
OFFICE OF HEARINGS AND APPEALS
PETITION FOR REFUND OR CREDIT OF PERSONAL INCOME TAX

DOCKET # ________
(For Dept. Use Only

In the Matter of

Taxpayer's Name ________	Name of tax ________
	Amount of tax ________
Taxpayer's Business Name (if applicable)	Amount of additions ________
________	Amount of penalty ________
Social Security or Acct. No. ________	Amount of interest ________
Taxpayer's Address ________	Total amount overpaid ________
________	Date of overpayment ________

The above named taxpayer having filed a claim for refund or credit and not having not received a determination hereby petitions for refund or credit and states the following in support of such petition:

First: The taxpayer states that he has overpaid taxes for the following periods and has claimed a refund or credit which has not been timely determined.

Second: The following facts are offered as the taxpayer's reasons for claiming the refund or credit: (Attach additional sheets if more space is needed).

Third: Therefore the taxpayer requests (State the relief sought such as, the refund be granted or credit established)

Taxpayer or Taxpayer's Representive's Name (print or type)

____

Title and Address ________

____

Telephone Number ________

____

State of ________

County of ________

________, being duly sworn according to the law, deposes and says that the facts contained in this petition, including any sheets attached hereto, are true and the affiant is the taxpayer or is duly authorized to represent the taxpayer.

____

Taxpayer or Taxpayer's Representative's Signature

Sworn to and subscribed before me this ___ day of ________, 19___, at ________. My commission expires ________, 19___.

____

Notary Public

(Optional form 6)

TO THE STATE TAX COMMISSIONER
OFFICE OF HEARINGS AND APPEALS
PETITION FOR REFUND OR CREDIT OF INHERITANCE AND TRANSFER TAXES

DOCKET #________
(For Dept. Use Only)

In Re: The Estate of ______________________________

File No. ______________________________

Petitioner's Name ______________________

Name of tax ________
Amount of tax ________
Amount of additions ________
Amount of penalty ________
Amount of interest ________
Total amount overpaid ________
Date of overpayment ________

Petitioner's Address ______________________
____

The above named petitioner having filed a claim for refund or credit and not having received a determination hereby petitions for refund or credit and states the following in support of such petition:

First: The petitioner states that he has overpaid taxes for the following periods and has claimed a refund or credit which has not been timely determined.

Second: The following facts are offered as the petitioner's reasons for claiming the refund or credit: (Attach additional sheets if more space is needed).

Third: Therefore the petitioner requests (State the relief sought such as, the refund be granted or credit established)

Petitioner or Petitioner's Representive's Name (print or type) ______________________
Title and Address ______________________
____
Telephone Number ______________________

State of ______________________
County of ______________________

______________________, being duly sworn according to the law, deposes and says that the facts contained in this petition, including any sheets attached hereto, are true and the affiant is the taxpayer or is duly authorized to represent the taxpayer.

____
Petitioner or Petitioner's Representative's Signature

Sworn to and subscribed before me this ___ day of ________, 19___, at ______________. My commission expires ____________, 19____.

____
Notary Public

(Optional form 7)

TO THE STATE TAX COMMISSIONER
OFFICE OF HEARINGS AND APPEALS
PETITION FOR REFUND OR CREDIT OF BUSINESS OR EXCISE TAXES

DOCKET #_________
(For Dept. Use Only)

In the Matter of

Taxpayer's Name__________________________	Name of tax____________________
	Amount of tax__________________
Taxpayer's Business Name (if applicable)	Amount of additions____________
____	Amount of penalty______________
File No.___________________________________	Amount of interest_____________
Taxpayer's Address_______________________	Total amount overpaid__________
____	Date of overpayment____________

The above named taxpayer against whom you have made a determination denying a claim for refund or credit hereby petitions for refund or credit and states the following in support of such petition:

First: The taxpayer disagrees with and objects to the following items included in the determination: (Number each item separately and attach additional sheets if needed).

Second: The following facts are offered as the taxpayer's reasons for objecting to the above-listed items: (Attach additional sheets if needed).

Third: Therefore the taxpayer requests (State the relief sought such as, the refund be granted or credit established)

Taxpayer or Taxpayer's Representive's Name (print or type)

____

Title and Address____

____

Telephone Number____

State of___________________________
County of__________________________

______________________________, being duly sworn according to the law, deposes and says that the facts contained in this petition, including any sheets attached hereto, are true and the affiant is the taxpayer or is duly authorized to represent the taxpayer.

____
Taxpayer or Taxpayer's Representative's Signature

Sworn to and subscribed before me this ___ day of _________, 19____, at ____________________. My commission expires_____________, 19_____.

____
Notary Public

(Optional form 8)

TO THE STATE TAX COMMISSIONER
OFFICE OF HEARINGS AND APPEALS
PETITION FOR REFUND OR CREDIT OF
PERSONAL INCOME TAX

DOCKET # ____________
(For Dept. Use Only

In the Matter of

Taxpayer's Name ______________________________

Taxpayer's Business Name (if applicable)
____

Social Security or Acct. No. ______________

Taxpayer's Address ______________________________
____

Name of tax ____________
Amount of tax ____________
Amount of additions ____________
Amount of penalty ____________
Amount of interest ____________
Total amount overpaid ____________
Date of overpayment ____________

The above named taxpayer against whom you have made a determination denying a claim for refund or credit hereby petitions for refund or credit and states the following in support of such petition:

First: The taxpayer disagrees with and objects to the following items included in the determination: (Number each item separately and attach additional sheets if needed).

Second: The following facts are offered as the taxpayer's reasons for objecting to the above-listed items: (Attach additional sheets if needed).

Third: Therefore the taxpayer requests (State the relief sought such as, the refund be granted or credit established)

Taxpayer or Taxpayer's Representive's Name (print or type)

____

Title and Address ______________________________
____

Telephone Number ______________________________
____

State of ______________________________

County of ______________________________

______________________________, being duly sworn according to the law, deposes and says that the facts contained in this petition, including any sheets attached hereto, are true and the affiant is the taxpayer or is duly authorized to represent the taxpayer.

____

Taxpayer or Taxpayer's Representative's Signature

Sworn to and subscribed before me this ___ day of __________, 19____, at ____________________. My commission expires ______________, 19______.

____

Notary Public

(Optional form 9)

TO THE STATE TAX COMMISSIONER
OFFICE OF HEARINGS AND APPEALS
PETITION FOR REFUND OR CREDIT OF
INHERITANCE AND TRANSFER TAXES

DOCKET #__________
(For Dept. Use Only)

In Re: The Estate of ________________________________

File No. ____

Petitioner's Name________________________

Petitioner's Address_____________________

____

Name of tax____________
Amount of tax____________
Amount of additions________
Amount of penalty__________
Amount of interest_________
Total amount overpaid_______
Date of overpayment________

The above named petitioner against whom you have made a determination denying a claim for refund or credit hereby petitions for refund or credit and states the following in support of such petition:

First: The petitioner disagrees with and objects to the following items included in the determination: (Number each item separately and attach additional sheets if needed).

Second: The following facts are offered as the petitioner's reasons for objecting to the above-listed items: (Attach additional sheets if needed).

Third: Therefore the petitioner requests (State the relief sought such as, the refund be granted or credit established)

Petitioner or Petitioner's Representive's Name (print or type)

____

Title and Address____

____

Telephone Number____

State of__________________________
County of_________________________

______________________________, being duly sworn according to the law, deposes and says that the facts contained in this petition, including any sheets attached hereto, are true and the affiant is the taxpayer or is duly authorized to represent the taxpayer.

____
Petitioner or Petitioner's Representative's Signature

Sworn to and subscribed before me this ___ day of _________, 19____, at ____________________. My commission expires_____________, 19_____.

____
Notary Public

TPA Reg. § 15.07. ADMINISTRATIVE HEARING ON A PETITION FOR REFUND.

Whenever a petition for refund or credit that substantially complies with TPA Reg. § 15.05 is timely filed, an administrative hearing will be held in accordance with the provisions of TPA Reg. § 13.

TPA Reg. § 15.08. EXTENSIONS OF TIME FOR FILING CLAIM FOR REFUND.

(a) Agreement to extend time. -- The taxpayer and appropriate tax department division may enter into an agreement extending the period in which a refund may be claimed. This agreement must be in writing; must be entered into prior to the expiration of the refund period; and shall not exceed two (2) years. This agreement may be extended for additional periods not to exceed two (2) years each, by subsequent agreements made in writing prior to the expiration of the previous period.

(b) Automatic extension of time. -- If an agreement has been entered into extending the time period during which an assessment may be made, then the time period for filing a claim for refund or credit of the same tax paid for the time periods subject to assessment under the extension agreement, shall also be extended for the period of the extension agreement plus ninety (90) days.

TPA Reg. § 15.09. OVERPAYMENT OF FEDERAL TAX.

Whenever a final determination reflecting an overpayment of the taxpayer's federal income tax, the period of limitation upon filing a claim for refund of carrier income tax, personal income tax or corporate net income tax shall not expire until six (6) months after date of the final determination of federal tax liability.

TPA Reg. § 15.10. BUSINESS AND OCCUPATION TAX AND CARRIER INCOME TAX DEFICIENCIES AFFECTING REFUNDS OF INCOME TAXES.

Whenever a final determination of a business and occupation tax or carrier income tax deficiency may result in a refund of personal or corporation net income taxes, the period of limitation upon filing a claim for refund reflecting such final determination shall not expire until six (6) months after date of such final deficiency determination was made.

TPA Reg. § 16. COMPUTATION OF INTEREST.

(a) General. -- Whenever any tax is not paid on or before the last date prescribed by law for payment, interest shall be charged at the rate of 8% per year from the last date prescribed for payment until the date the tax is paid. The last date prescribed for payment is determined without including any extensions of time for payment. All interest is mandatory and payment cannot be excused for any reason.

(b) Underestimated business and occupation tax. -- Whenever a taxpayer is required to file a monthly or quarterly estimated business and occupation tax return and reports less than 80% of actual gross income received during the period of the report, interest at the rate of 8% per year is charged on the underpayment of estimated business and occupation tax from the last date prescribed for payment until date the tax is paid. The last date prescribed for payment is determined without including any extensions of time for payment.

(1) Requirement to file monthly returns. -- Whenever a taxpayer's annual business and occupation tax liability exceeds an average of $1,000 per month, monthly estimated returns must be filed.

(2) Seasonal business taxpayers. -- If taxpayer's annual business and occupation tax liability is $12,000 per year or less, but due to the nature of his business, the tax liability for one or more months may exceed $1,000, such taxpayer will not be required to file monthly returns for these months. Taxpayer must, however, file quarterly returns.

(3) Reliance on past year is not sufficient. -- Reliance by taxpayer on knowledge that during the last tax year his annual business and occupation tax liability was $12,000 or less will not relieve the taxpayer from filing monthly returns if during the course of the current tax year he becomes, or should have been aware, that his business and occupation tax liability will exceed $12,000 for current tax year.

(c) Erroneous refund or credit. -- Interest, at the rate of 8% per year, is charged on the amount of any refund or credit paid by the tax department based on an erroneous claim for refund or credit. Interest shall be paid from the date the refund was made (date on the state warrant) or credit was taken to the date the tax department recovers the erroneous refund or credit.

(d) Overpayment. -- The tax department will pay interest at the rate of 8% per year on any amount which has been finally administratively or judicially determined to be an overpayment of taxes administered under the West Virginia Tax Procedure and Administration Act. Interest will be paid for the period beginning with the date the claim for refund or credit is filed until date of the final administrative or judicial determination of overpayment. Where the tax commissioner fails to issue his requisition on the treasury, or establish the credit within thirty (30) days after date of the final determination, interest begins to accrue until the tax commissioner issues his requisition or establishes the credit. Exceptions to this general rule are as follows.

(1) No interest shall be payable where the refund is made, or the credit is established, within ninety (90) days after date the claim for refund or credit is filed.

(2) No interest shall be payable or claims for personal income tax and corporation net income tax where the refund is made or the

credit is established, credited within six (6) months after date the claim for refund or credit is filed.

(3) No interest shall be payable on refunds or credits of business franchise registration certificate tax, the gasoline and special fuel excise tax or the motor carrier road tax.

(e) Interest on additions to tax and penalty. -- Interest is charged on additions to tax and penalty only when the tax, interest, additions to tax and penalties are not paid within fifteen (15) days after date of notice and demand therefore.

TPA Reg. § 16.01 INTEREST CALCULATOR CHART.

(a) The charts below show interest stated in a decimal to be used by taxpayers and the tax department for monthly and daily computations of interest.

(b) Interest stated as a decimal for each month.

Month	Interest	Month	Interest
1	.00667	7	.04666
2	.01334	8	.05333
3	.02000	9	.06000
4	.02666	10	.06667
5	.03333	11	.07333
6	.04000	12	.08000

(c) Interest stated as a decimal for each day.

Day	Interest	Day	Interest	Day	Interest
1	.00022	12	.00264	23	.00506
2	.00044	13	.00286	24	.00528
3	.00066	14	.00308	25	.00550
4	.00088	15	.00330	26	.00572
5	.00110	16	.00352	27	.00594
6	.00132	17	.00374	28	.00616
7	.00154	18	.00396	29	.00638
8	.00176	19	.00418	30	.00660
9	.00198	20	.00440	31	.0067
10	.00220	21	.00462		
11	.00242	22	.00484		

TPA Reg. § 17. ADDITIONS TO TAX.

Additions to tax are imposed for a number of different acts, failures to act or omissions by taxpayers. The following regulations govern the imposition and computation of additions to tax.

TPA Reg. § 17.01.	Failure to file return
TPA Reg. § 17.02.	Failure to pay tax
TPA Reg. § 17.03.	Negligence or intentional disregard
TPA Reg. § 17.04.	False or fraudulent return
TPA Reg. § 17.05.	Summary chart
TPA Reg. § 17.06.	Examples of interest and additions to tax

TPA Reg. § 17.01. ADDITIONS TO TAX FOR FAILURE TO FILE RETURN.

If a taxpayer fails to file a return on or before the prescribed due date (determined including any authorized extension of time), and the failure is for more than one month, an addition to tax equal to 5% of the amount of tax due is charged for each month (or fraction thereof) of the failure to file. The maximum addition is equal to 25% of the amount of tax due for the taxable period. This addition to tax is waivable by the tax commissioner where the taxpayer proves that his failure to timely file the tax return was due to reasonable cause and not due to willful neglect.

Period of Delinquency	Addition to Tax
1 month or fraction thereof -	0
2 months or fraction thereof -	5%
3 months or fraction thereof -	10%
4 months or fraction thereof -	15%
5 months or fraction thereof -	20%
6 months or fraction thereof -	25%
More than 6 months not to exceed the taxable period -	25%

TPA Reg. § 17.02. <u>ADDITIONS TO TAX FOR FAILURE TO PAY TAX.</u>

(a) If a tax return is filed on or before the prescribed due date (determined including any authorized extension of time), but there is a failure to pay the entire amount of tax shown to be due, an addition to tax equal to 1/2 of 1% of the amount of tax due and unpaid is charged for each month (or fraction thereof) of the delinquency. The maximum addition is 25% of the amount of tax due and unpaid. This addition to tax is waivable where the taxpayer proves that his failure was due to reasonable cause and not due to willful neglect.

(b) The chart below shows additions to tax for failure to remit amount shown to be due stated in a decimal.

Month[1]	Addition	Month[1]	Addition
1	.005	26	.130
2	.010	27	.135
3	.015	28	.140
4	.020	29	.145
5	.025	30	.150
6	.030	31	.155
7	.035	32	.160
8	.040	33	.165
9	.045	34	.170
10	.050	35	.175
11	.055	36	.180
12	.060	37	.185
13	.065	38	.190
14	.070	39	.195
15	.075	40	.200
16	.080	41	.205
17	.085	42	.210
18	.090	43	.215
19	.095	44	.220
20	.100	45	.225
21	.105	46	.230
22	.110	47	.235
23	.115	48	.240
24	.120	49	.245
25	.125	50	.250

[1] or fraction thereof

(c) Limitation. -- In computing additions to tax under TPA Reg. §§ 17.01 and 17.02, only one section shall be applicable to any one taxable period. If the correct amount of tax due is less than the amount shown on the return TPA Reg. §§ 17.01 and 17.02 shall apply only to the lower amount.

TPA Reg. § 17.03. ADDITIONS TO TAX FOR NEGLIGENCE OR INTENTIONAL DISREGARD OF RULES AND REGULATIONS.

Where underpayment of any tax is for more than one month and such underpayment is due to negligence or intentional disregard of rules and regulations (but without intent to defraud), an addition to tax equal to 5% of the amount of tax due is charged for each month (or fraction thereof) of the underpayment due to negligence or intentional disregard of rules or regulations. The maximum addition is equal to 25% of the amount of tax due and unpaid. It is imposed in lieu of any other additions to tax.

Period of Negligence	Additions to Tax
1 month or fraction thereof -	0
2 months or fraction thereof -	5%
3 months or fraction thereof -	10%
4 months or fraction thereof -	15%
5 months or fraction thereof -	20%
6 months or fraction thereof -	25%
More than 6 months not to exceed the taxable period -	25%

The tax commissioner has no authority to waive this addition to tax for reasonable cause or for any other reason. However, whether taxpayer was negligent or intentionally disregarded rules and regulations of the tax department is a question of fact. Taxpayer bears the burden of proving that he was not negligent and that he did not intentionally disregard rules and regulations of the tax commissioner.

TPA Reg. § 17.04. <u>ADDITIONS TO TAX FOR FILING FALSE OR FRAUDULENT RETURN</u>.

(a) <u>General</u>. -- Where the taxpayer files a false or fraudulent return with intent to evade such tax, or where the taxpayer willfully fails to file a return with intent to evade tax, there is added to the amount of tax due an addition to tax equal to 50% of the amount of tax due. It is imposed in lieu of any other additions to tax.

(b) Burden of proof. -- The tax commissioner bears the burden of proving fraud, willfulness or intent to evade tax.

TPA Reg. § 17.05. SUMMARY CHARTS -- INTEREST AND ADDITIONS TO TAX.

The following charts show interest and additions to tax in summary form.

Nature of Interest	Amount	Code Section
Underpayment of tax (without regard to extensions of time)	8% per year	§ 11-10-17(a)
Underpayment estimated business and occupation tax	8% per year	§ 11-10-17(b)
Erroneous refund or credit	8% per year	§ 11-10-17(c)
Overpayments	8% per year	§ 11-10-17(d)
Interest on additions to tax and penalties	8% per year (only if not paid within 15 days after notice and demand)	§ 11-10-17(e)1

Nature of Additions to Tax	Amount	Code Section
Failure to file return (may be waived for reasonable cause)	5% month, not to exceed 25%	§ 11-10-18(a)1
Failure to pay tax due (may be waived for reasonable cause)	1/2% month, not to exceed 25%	§ 11-10-18(a)2
Negligence or intentional disregard	5% month, not to exceed 25%	§ 11-10-18(c)
False or fraudulent return	50%	§ 11-10-18(d)

TPA Reg. § 17.06. <u>EXAMPLES OF INTEREST AND ADDITIONS TO TAX COMPUTATIONS</u>.

(a) <u>Example 1</u>. <u>Late filed return</u>. -- Taxpayer's business and occupation tax return was due January 31, 1979. However, it was not filed until April 14, 1979. The tax shown to be due was $4,000.00 (determined before deduction for estimated payments). During 1978, taxpayer made quarterly estimated payments totaling $3,000.00. A check for $1,000.00 was attached to the tax return. On June 2, 1979, a letter was sent to the taxpayer advising him of the interest ($16.42), and additions to tax ($100.00), that had accrued through April 14, 1979.

(1) Interest:

$1,000 x 2 months + 14 days
$1,000 x (.01334 + .00308) = $16.42

(2) Additions to tax:

$1,000 x 2 months (March & April)
$1,000 x 10% = $100.00

(3) Cross references:

TPA Reg. § 16(a).	Computation of interest
TPA Reg. § 16.01.	Interest calculator chart
TPA Reg. § 17.01.	Additions for failure to file return

(b) <u>Example 2</u>. <u>Late filed return; payment in fifteen days</u>. -- Same facts as in Example 1. However, taxpayer pays the balance of tax due ($116.42) before June 17, 1978. Since payment was made within 15 days after date of notice and demand, no additional interest is due. See TPA Reg. § 16(e), interest on additions to tax and penalty.

(c) Example 3. Late filed return; payment after 15 days. -- Same facts as in Example 1. However, taxpayer does not pay the balance of tax due ($116.42) until June 25, 1979. Between April 14, 1979 and June 25, 1979, additional interest of $1.58 accrued on the additions to tax.

(1) Interest:

$100.00 x 2 months + 11 days
$100.00 x .01576 = $1.58

(2) Cross references:

TPA Reg. § 16(e).	Interest on additions to tax
TPA Reg. § 16.01.	Interest calculator chart

(d) Example 4. Failure to timely pay tax. -- ABC Company vendor filed its consumers sales and service tax return for January 1979 on February 15, 1979. This return showed tax due of $2,000.00, none of which was paid with the tax return. On April 6, 1979, the Tax Department wrote to the taxpayer demanding payment of the amount of tax ($2,000.00) plus additions to tax ($20.00) and interest ($23.02) calculated through April 6, 1979. Total due - $2,043.02.

(1) Additions to tax:

$2,000 x 2 months
$2,000 x 1% = $20.00

(2) Interest:

$2,000 x 1 month + 22 days
$2,000 x (.00667 + .00484) = $23.02

(3) Cross references:

TPA Reg. § 16.	Computation of interest
TPA Reg. § 16.01.	Interest calculator chart
TPA Reg. § 17.02.	Additions for failure to pay

(e) Example 5. Failure to timely pay after notice and demand. -- Same facts as Example 4 except that ABC Company does not make payment until May 6, 1979. During that time, additions to tax of $10.00 and additional interest of $13.47 accrued. Total due - $2,066.49.

(1) Additions to tax:

$2,000 x .5% = $10.00

(2) Interest:

$2,000 + $20.00 x 1 month
$2,000 + $20.00 x .00667 = $13.47

(3) Cross references:

TPA Reg. § 16(e).	Interest on additions to tax
TPA Reg. § 16.01.	Interest calculator chart
TPA Reg. § 17.02.	Additions for failure to pay

(f) Example 6. Failure to timely pay; partial payment in 15 days. -- Same facts as Example 4 except that ABC Company paid $1,500.00 of the $2,043.02 on April 21, 1979. On May 20, 1979, the Tax Department wrote to the taxpayer advising that the $1,500.00 payment had been received leaving a balance due of $500.00 in tax plus interest of $32.88 and additions to tax of $32.50 calculated through May 20, 1979.

(1) Additions to tax:

$2,000 x 3 months (Feb. 16 through May 15)
$2,000 x .015 = $30.00
$500 x 1 month (May 16 through June 15)
$500 x .005 = $2.50
Total - $32.50

(2) Interest:

$2,000 x 2 months + 6 days (Feb. 16 through April 21)
$2,000 x (.01334 + .00132) = $29.32
$500 x 1 month
$500 x .00667 = $3.34

(3) Interest on additions to tax:

$20 x 1 month + 14 days
$20 x (.00667 + .00308) = $0.20

(4) Total interest - $32.86

(5) Cross references:

TPA Reg. § 16(e).	Interest on additions to tax
TPA Reg. § 16.01.	Interest calculator chart
TPA Reg. § 17.02.	Additions for failure to timely pay

(g) <u>Example 7</u>. <u>Mathematical error; timely filed returns</u>. -- DEF Corporation filed its annual business and occupation tax return on January 28, 1979. This return showed tax due of $25,000 less estimated payments of $22,000 and the $50.00 exemption leaving a balance due of $2,950 which was remitted. Upon audit of the tax return, a mathematical error was discovered resulting in additional tax due of $200.00. On August 15, 1979, the taxpayer was advised of the mathematical error and the amount of additions to tax ($7.00) and interest ($8.66) that accrued since January 31, 1979. Total due - $215.66.

(1) Additions to tax:

$200.00 x 7 months
$200.00 x .035 = $7.00

(2) Interest:

$200.00 x 6 months + 15 days
$200.00 x (.04 + .00330) = $8.66

(3) Cross reference:

TPA Reg. § 9(a). Mathematical error

(h) <u>Example 8</u>. <u>Late filed return with mathematical error</u>. -- Taxpayer's annual business and occupation tax return was due January 31, 1979. Taxpayer filed the return on April 14,

1979. The tax shown to be due was $4,000 (determined before deduction for estimated payments). Taxpayer had made quarterly estimated payments totaling $3,000. Taxpayer remitted a check in the amount of $1,000 with the late filed retun. A mathematical error was found resulting in additional tax due of $500. On June 6, 1979, a <u>15-day letter</u> was sent to taxpayer advising him of the additional tax ($500), interest ($30.41), and additions to tax ($150) due because of the late filing. Interest and additions would be computed for purposes of the June 6, notice as follows:

Interest of 1.642% on $1,000 (8% per year on net amount shown due on return - $4,000 minus $3,000 payments equals $1,000 from last date prescribed for payment to April 14, 1979 which is 2 months and 14 days)	$1,000 x .01642 = $16.42
Interest of 2.798% on $500 (8% per year on amount required to be shown due from last date prescribed for payment to June 6, 1979 which is 4 months and 6 days)	$500 x .02798 = $13.99
Additions to tax of 10% on $1,500 (Return filed more than one month late add 5% for March and 5% for fraction of April on the <u>net amount required</u> to be shown due which is $4,000 minus $3,000 payments or $1,000 (net amount) plus $500 required due because of error totaling $1,500)	$1,500 x .10 = $150.00

On June 15, 1979, taxpayer remits a check in the amount of $530.41 and states reasonable cause for waiver of additions to tax. Because the taxpayer paid the tax and interest and stated reasonable cause for waiver of additions to tax within 15 days of receipt of notice and demand, no additional interest has accrued and the matter is concluded.

(i) Example 9. Late filed return with mathematical error and failure to respond to notice and demand. -- Assume the same facts as Example 8 except that the taxpayer does not respond to the June 6, 1979 letter. An assessment for tax ($500), interest ($46.92), and additions ($150) is prepared on October 4, 1979. Interest and additions would be computed as follows:

Interest of 1.642% on $1,000 (computed the same as example 8)	$1,000 x .01642 = $16.42
Interest of 6.088% on $500 (8% per year on amount required to be shown due from last date prescribed for payment to October 4, 1979 which is 9 months and 4 days)	$500 x .06088 = $30.44
Additions to tax for failure to file of 10% on $1,500 (computed the same as example 8)	$1,500 x .10 = $150.00

(j) Example 10. Example 9 plus petition for reassessment. -- The assessment referred to in Example 9 is issued on October 4, 1979. On November 20, 1979, taxpayer files a petition for reassessment requesting waiver of the additions to tax. An administrative hearing is held on January 5, 1980. Subsequently, on February 14, 1980, an administrative decision is issued waiving the additions to tax for reasonable cause. The decision would state tax due ($500) and the interest ($57.96) would be computed as follows:

Interest of 1.642% on $1,000 (computed the same as example 8)	$1,000 x .01642 = $16.42
Interest of 8.308% on $500 (8% per year from last date prescribed for payment to February 14, 1980 on net amount due)	$500 x .08308 = $41.54
Additions to tax waived for reasonable cause	

If the amount is paid within 15 days from receipt of the administrative decision, no additional interest will accrue. If not so paid, interest will continue to accrue until the amount is satisfied.

(k) Example 11. Timely filed returns, partial payment. -- Taxpayer's annual business and occupation tax return was due January 31, 1979. Taxpayer filed the return on January 15, 1979. The tax shown to be due was $15,000. Taxpayer had made monthly estimated payments totaling $12,000. Taxpayer remitted a check in the amount of $2,000 as partial payment for the net amount due. On April 25, 1979, a 15-day letter was sent to taxpayer to collect the tax ($1,000), interest ($18.84), and additions to tax ($15.00) due because of the partial remittance. Interest and additions would be computed for purposes of the April 25 notice as follows:

Interest of 1.884% on $1,000 (8% per year from last date prescribed for payment January 31, 1979 to April 25, 1979 on net amount shown due on return and not remitted - $15,000 due minus $12,000 estimated payments leaving $3,000 net due minus $2,000 partial payment resulting in $1,000 tax due)	$1,000 x .01884 = $18.84
Additions to tax for failure to pay of 1.5% on $1,000 (1/2% per month or fraction of month on net amount of tax due)	$1,000 x .015 = $15.00

On May 1, 1979, taxpayer remits a check in the amount of $1,033.84 representing tax, interest, and additions to tax. Because taxpayer paid the total due within 15 days of receipt of the notice, no additional interest has accrued and the matter is concluded.

(l) <u>Example 12</u>. <u>Timely filed return, partial payment, failure to respond to notice and demand</u>. -- Assume the same facts as Example 11 except that the taxpayer does not respond to the April 25, 1979 letter. A lien for tax ($1,000), interest ($38.08), and additions to tax ($30.00) is prepared on July 19, 1979. Interest and additions would be computed as follows:

Interest of 3.751% on $1,000 (8% per year from last date prescribed for payment to July 19, 1979 on the net amount due computed the same as example 11)	$1,000 x .03751 = $37.51
Additions to tax for failure to pay of 3% on $1,000 (1/2% per month or fraction of month on net amount of tax due)	$1,000 x .03 = $30.00
Interest on additions to tax of 1.862% on $30.00 (8% per year from date of notice which was April 25, 1979 to date of lien which is July 19, 1979 or 2 months and 24 days on the amount of additions to tax or $30.00)	$30.00 x .01862 = $0.57

Interest and additions will continue to accrue until the lien is satisfied. Additions to tax, however, will not exceed 25% in the aggregate.

(m) <u>Example 13</u>. <u>Underestimating of business and occupation tax, correction on annual return</u>. -- QRS Corporation timely filed its monthly and annual business and occupation tax returns for calendar year 1979 paying the amount shown thereon to be due. During audit of taxpayer's books and records, it was determined that taxpayer failed to report gross income of $50,000, which accrued to it on July 15, 1979, when it filed its estimated return for July. This resulted in gross income for July being underestimated by more than 20%. It was further determined that taxpayer's error had not been corrected on subsequent estimated returns but, taxpayer's annual return filed January 30, 1980 included the income. Taxpayer was advised that it owed interest of $36.52 for the period September 1, 1979 through January 30, 1980 on account of the underestimating of gross income.

(1) Interest:

$50,000 x .0220 (tax rate) = $1,100.00
$1,100 x 4 months + 30 days
$1,100 x (.02666 + .00660) = $36.59

(2) Cross reference:

TPA Reg. § 16(b). Interest - underestimating of business and occupation tax.

(n) Example 14. -- Underestimating of business and occupation tax, correction on return filed for next period. -- Same facts as Example 13 but taxpayer discovers its error and reports the $50,000 on its estimted return for the month of August which was filed on September 30, 1979. Taxpayer was advised that it owed interest of $7.34 for the period September 1, 1979 through September 30, 1979.

(1) Interest:

$50,000 x .0220 (tax rate) = $1,100.00
$1,100 x 1 month
$1,100 x .00667 = $7.34

(2) Cross reference:

TPA Reg. § 16(b). Interest - underestimating of business and occupation tax

TPA Reg. § 18. PENALTIES.

(a) Civil penalties in the form of an amount assessed as a percentage of tax due or sum certain are provided for noncompliance with the tax laws.

(b) Cross references.

TPA Reg. § 18.01.	Failure to collect, account for, and pay over tax, attempt to defeat or evade tax
TPA Reg. § 18.02.	Fraudulent statement or failure to furnish statement to employees
TPA Reg. § 18.03.	Fraudulent claim for a refund
TPA Reg. § 18.04.	Failure to obtain business franchise registration certificate
TPA Reg. § 18.05.	Failure to file certain required tax returns when no tax due

TPA Reg. § 18.01. FAILURE TO COLLECT, ACCOUNT FOR, AND PAY OVER TAX, ATTEMPT TO DEFEAT OR EVADE TAX.

Any person required to collect account for and pay over any tax, who willfully fails truthfully to account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable for a money penalty equal to the total amount of tax (excluding interest) evaded, or not collected, or not accounted for and paid over. This penalty shall be in lieu of any other additions to tax.

TPA Reg. § 18.02. FRAUDULENT STATEMENT OR FAILURE TO FURNISH STATEMENT TO EMPLOYEES.

Any person required under the personal income tax law to furnish a withholding tax statement to employees, who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required by law or regulations, shall be subject to a penalty of $50.00 for each such failure or false statement.

TPA Reg. § 18.03. <u>FRAUDULENT CLAIM FOR A REFUND OR CREDIT</u>.

Any refund or credit granted based upon the filing of a false or fraudulent claim for refund or credit with intent to defraud this state, shall be repaid and there shall be added a penalty in the amount of 50% of the amount erroneously refunded or credited (including any interest paid by the State of West Virginia). This penalty shall be in lieu of any additions to tax.

TPA Reg. § 18.04. <u>FAILURE TO OBTAIN BUSINESS FRANCHISE REGISTRATION CERTIFICATE</u>.

Any person who engages in or prosecutes any business activity in this state without complying with the registration requirements of the business franchise registration certificate tax may be subject to a penalty of $50.00 for each month or fraction thereof during which he has not been in compliance.

TPA Reg. § 18.05. <u>FAILURE TO FILE CERTAIN REQUIRED TAX RETURNS WHEN NO TAX DUE</u>.

Persons required to file gasoline and special fuels excise tax returns, motor carrier road tax returns, and cigarette tax returns who fail to make or file a return when no tax is due, as required by law, on or before the date prescribed for filing, shall be subject to a penalty of $25.00 for each month that a required tax return is not filed. This penalty may be waived where the taxpayer proves that his failure was due to reasonable cause and not due to willful neglect.

TPA Reg. § 19. COLLECTION.

(a) General. -- In addition to all statutory remedies available for collection of debts due the state, the tax commissioner may issue a distress warrant under W. Va. Code § 11-10-13, or foreclose on the lien for taxes created by W. Va. Code § 11-10-12, to collect any tax, additions to tax, penalties and interest due the state.

(b) Collection of balance due where taxpayer files no remittance return. -- If a taxpayer files a mathematically correct return which reflects a balance due of any tax administered under the West Virginia Tax Procedure and Administration Act, and if full payment thereof has not been made, the tax commissioner shall notify the taxpayer in writing, of the amount of tax, additions to tax, penalties or interest due. The taxpayer shall have fifteen (15) days after receipt of such notice in which to make payment. If the taxpayer fails to make payment within this fifteen (15) day period, the tax commissioner may proceed under subsection (a) to collect the amount due.

TPA Reg. § 19.01. COLLECTION OF TAXES OWED BY ANOTHER FROM THIRD PARTIES.

(a) Liability of fiduciaries and sureties for inheritance taxes. -- Every fiduciary, and the sureties on his official bond, shall be liable to the state for any inheritance and transfer taxes, additions to tax, penalties and interest payable to the state on the estate of his decendent. This liability cannot exceed the amount of moneys and the value of the property which come into his hands as fiduciary of the estate, including the proceeds from all sales of real estate received by him, as fiduciary. If any fiduciary fails to perform any duties imposed on him by the inheritance and transfer tax law, he and his sureties shall be liable upon his bond for damages resulting from such failure.

(b) Liability of officers of associations or corporations for sales tax. -- The officers of an association or corporation shall be personally liable, jointly and severally, for any default on the part of the association or corporation to pay any consumers sales and service tax, including any additions to tax, penalties and interest. This liability may be enforced against them as against the association or corporation which they represent. The person assessed as an officer of a corporation or association bears the burden of proving by clear and convincing evidence that he was not an officer. It is immaterial that he was not the officer responsible for filing the tax return or for remitting the tax. It is not a defense for one who acts as an officer to assert that he was not properly elected as an officer of the corporation or association. Persons ostensibly acting as officers are ordinarily presumed to be rightfully in office. Each case must be decided on its own particular set of facts. Important factors include, but are not limited to: whether there was implied or expressed acceptance of the office; notice or knowledge of corporate meetings; access to corporate or association books, records or tax returns; power to draw checks on bank accounts; and participation in financial planning, business planning or tax planning, etc.

(c) Liability of successors in interest. -- The successor in business to any person who sells out his business or stock of goods, shall withhold so much of the purchase money as will satisfy any tax, additions to tax, penalties and interest collectible under the West Virginia Tax Procedure and Administration Act until the former owner produces a receipt from the tax commissioner evidencing payment thereof. If the purchaser of a business or stock of goods shall fail to withhold purchase money as required above, and if any such tax, additions to tax, penalties and interest remain unpaid after expiration of the thirty (30) day period allowed for payment thereof, the purchaser shall be personally liable for the payment of any such tax, additions to tax, penalties and interest, and the same shall be recoverable as provided in TPA Reg. § 19.

(d) Liability of person who contracts with nonresident contractor. -- Any person who contracts with a nonresident contractor shall withhold payment in the final settlement of such contract, of sufficient amount (not to exceed 6% of the contract price) as will in such person's opinion, be sufficient to cover business and occupation taxes, employer's withholding taxes and corporation net income taxes attributable to the contract. Upon receipt of a certificate from the tax commissioner to the effect that the above-referenced taxes have been paid or provided for, the amount withheld may be released. If any person fails to withhold as required by this subsection, he shall be personally liable for the payment of all such taxes attributable to the contract, not to exceed 6% of the contract price.

TPA Reg. § 19.02. OTHER AIDS TO COLLECTION.

(a) Prerequisite for issuance of certificate of dissolution or withdrawal of corporation.

The secretary of state shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business in this state, until the receipt of a certificate from the tax commissioner to the effect that every tax administered under this article imposed against any such corporation has been paid or provided for, or that the applicant is not liable for any tax administered under this article.

(b) Prerequisite to final settlement of contract with this state or political subdivision.

(1) General. -- All state, county, district and municipal officers and agents making contracts on behalf of this state or any political subdivision thereof shall withhold payment, in the final settlement of any such contract, until the receipt of a certificate from the tax commissioner to the effect that the business and occupation taxes, employer withholding taxes and corporation net income taxes imposed by articles thirteen, twenty-

one and twenty-four of this chapter against the contractor have been paid or provided for.

(2) Municipal business and occupation tax. -- If the transaction embodied in such contract or the subject matter of the contract is subject to county or municipal business and occupation tax, then such payment shall also be withheld until receipt of a release from such county or municipality to the effect that all county or municipal business and occupation taxes levied or accrued against the contractor have been paid.

(3) Penalty. -- Any official violating this section shall be subject to a civil penalty of one thousand dollars, recoverable as a debt in a civil action brought by the tax commissioner.

(c) Injunction.

If the taxpayer fails for a period of more than sixty (60) days to fully comply with any of the provisions of W. Va. Code Article 11-10, or of any other article of chapter eleven to which this article is applicable, the tax commissioner may institute a proceeding to secure an injunction to restrain the taxpayer from doing business in this state until the taxpayer fully complies with the provisions of W. Va. Code Article 11-10 and/or any of such other articles.

TPA Reg. § 19.04. <u>NONRESIDENT CONTRACTOR DEFINED</u>.

The term "nonresident contractor" as used in TPA Reg. §§ 19.01(d) and 19.02(b) shall mean any nonresident person engaged in the business of furnishing labor or materials or both labor and materials in the fulfillment of any contract, either written or oral, for the construction, alteration, repair, decoration or improvement of a new or existing building or structure or any part thereof or for the alteration, improvement or development of real property.

TPA Reg. § 20. <u>STATUTE OF LIMITATIONS FOR ASSESSMENTS</u>.

(a) For all tax periods ending after January 1, 1980, the amount of tax, additions to tax, penalties and interest shall be assessed within three (3) years after the due date of the returns.

(b) For all tax periods ending after December 31, 1978, but prior to January 1, 1980, the amount of tax, additions to tax, penalties and interest shall be assessed within four (4) years after the due date of the return or the date which the return was filed, whichever expires later.

(c) For all tax periods ending prior to January 1, 1979, the amount of tax, additions to tax, penalties and interest shall be assessed within five (5) years after the due date of the return was filed, whichever expires later.

(d) An assessment for tax, additions to tax, penalties and interest may be made at any time for any taxable period if no return has been filed or if a false or fraudulent return was filed with the intent to evade tax.

(e) Cross references.

TPA Reg. § 20.01	Summary chart statute of limitations on assessments
TPA Reg. § 20.02	Extension by agreement
TPA Reg. § 20.03	Limitation on assessment when federal tax deficiency

TPA Reg. § 20.01. SUMMARY CHART STATUTE OF LIMITATIONS ON ASSESSMENTS.

Tax Period Ending	Statute of Limitations
Prior to 1/1/79	5 years after due date of return or 5 years after date return filed, whichever expires later
1/1/79 to 12/31/79	4 years after due date of return or 4 years after date return filed, whichever expires later
After 1/1/80	3 years after due date of return

TPA Reg. § 20.02. EXTENSION BY AGREEMENT.

The taxpayer and appropriate tax department division may enter into an agreement extending the period in which an assessment may be made. This agreement must be in writing; must be entered into prior to the expiration of the assessment period; and shall not exceed two (2) years. This agreement may be extended for additional periods not to exceed two (2) years by subsequent agreements made in writing prior to the expiration of the previous period.

TPA Reg. § 20.03. LIMITATION ON ASSESSMENT WHEN FEDERAL TAX DEFICIENCY.

Whenever a final determination reflecting a deficiency of the taxpayer's federal income tax has been made, the period of limitation upon an assessment of a deficiency of taxpayer's net income under the carrier income tax, corporation net income tax or personal income tax shall not expire until ninety (90) days after date the taxpayer advises the appropriate division of the determination, or until the period of limitation shall expire according to the rules set forth in TPA Reg. § 9, whichever expires later.

TPA Reg. § 21. <u>EFFECTIVE DATE AND APPLICABILITY OF TAX PROCEDURE ACT</u>.

(a) <u>General</u>. -- The Tax Procedure and Administration Act took effect July 1, 1978. The provisions of sections 11-10-1 through 11-10-14 apply on and after the effective date regardless of when the tax liability arose except that where the assessment was issued prior to July 1, 1978, the assessment, hearing and court appeals shall be governed by the laws as they existed prior to July 1, 1978.

(b) The provisions of sections 11-10-15 and 11-10-16 relating to statutes of limitations on assessments and collections shall apply only with respect to taxes imposed for periods ending after June 30, 1978.

(c) The provisions of W. Va. Code sections 11-10-17, 11-10-18 and 11-10-19, except as provided below in subsection (d), apply to tax periods ending on or after July 1, 1978. With respect to the various taxes administered under the Act, these sections apply as follows.

Tax	Application To
Business franchise tax	annual certificates for July 1, 1978 through June 30, 1979 and thereafter
Business and occupation tax	
estimates	for tax periods ending after June 30, 197
annual	for tax years ending after June 30, 1978
Carrier income tax	for tax years ending after June 30, 1978
Cigarette tax	for tax periods ending after June 30, 197
Consumers sales and service tax	for tax periods ending after June 30, 197
Corporation net income tax	for tax years ending after June 30, 1978
Gasoline and special fuels excise tax	for tax periods ending after June 30, 1978
Inheritance and transfer taxes	persons dying after June 30, 1978
Motor carrier road tax	for tax periods ending after June 30, 1978
Personal income tax	for tax years ending after June 30, 1978
Soft drinks tax	for tax periods ending after June 30, 1978
Use tax	for tax periods ending after June 30, 1978
Withholding tax	for tax periods ending after June 30, 1978

(d) Election of tax to apply new law to prior periods. -- The provisions of W. Va. Code sections 11-10-17, 11-10-18 and 11-10-19 relating to interest, additions to tax and penalties may apply to tax periods ending prior to July 1, 1978 if the taxpayer elects to have all of the provisions of sections 11-10-17, 11-10-18 and 11-10-19 apply to the tax period. In order to take such election, the taxpayer must:

(1) Request such election in writing addressed to the appropriate division.

(2) The election must be made at the latest within sixty (60) days after date the assessment is served on the taxpayer.

(3) Once the election is made to proceed under sections 11-10-17, 11-10-18 and 11-10-19, the election may not be revoked.

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