



**Dave Hardy**  
Secretary of Revenue

**STATE TAX DEPARTMENT**

**Matthew Irby**  
State Tax Commissioner

January 23, 2023

**VIA EMAIL**

Angela R. Mullins, Executive Director  
Office of Tax Appeals  
1012 Kanawha Blvd. East, Suite 300  
Charleston, WV 25301

Re: Comments on Proposed Procedural Rules  
WV Office of Tax Appeals

We have reviewed the proposed amended OTA Procedural Rule (121 CSR 1), and provide the following comments for consideration:

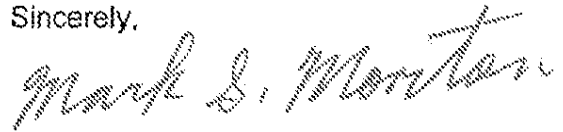
1. §2.11 refers to intervenors in "section 44 of this rule," a section which has been stricken from the amended rule. In the proposed amended rule, parties are dealt with in section 25, although we do not see any reference to intervenors in the new section.
2. §2.13.2 refers to the no longer existing section 44, see supra.
3. §2.13.3 refers to "a contingently joined party under section 42 of this rule," a section that no longer exists. The new section 25, dealing with parties, makes no reference to contingent joinder of parties.
4. §8.1 refers to "subdivision 64.4.2 of this rule." There is no section 64 in the proposed amended rule.
5. §8.2.1.a requires redaction of OTA decisions before publication. Rulings regarding property taxes have historically been excepted from such confidentiality provisions.
6. §10.1 under prior law, appeals of valuation, or appeals from a Tax Commissioner's ruling were heard in open session of the county commission. Under the new law,

appeals of valuation may still be heard by the county commission sitting as a board of equalization and review, in sessions open to the public.

7. §16.1. The verb "choses" should read "chooses."
8. §16.2 The heading "Prose appearance" should read "*Pro se* appearance."
9. §16.4 makes reference to a visiting attorney applying for pro hac vice admission to the judge of any circuit court of this state in which a petition for appeal of an adverse administrative decision of the office of tax appeals may be filed. This should likely also reference the Intermediate Court of Appeals.
10. §18.1 The word "as" should read "of".
11. §18.2.2 Letter size paper should be "8 ½" x 11".
12. §18.2.3.i makes reference to "section 110" which no longer exists.
13. §36.1 refers to "section 58," a non-existent section.
14. §37.4. (see comment 6 relating to §10.1, supra) regarding Property tax hearings at OTA being open to the public.
15. §37.7 "Commissioners" should be in the genitive (possessive) case. This is conventionally indicated by an apostrophe: "commissioner's."
16. §41.5.1 refers to "subdivision 68.5.2." There is no section 68 in the amended rule.
17. §47.1 requires redaction of all OTA decisions, except small claims decisions, before publication in the State Register. For reasons stated above, this may not apply to property tax decisions.
18. §51.2.1 places "cases in which the amount in controversy does not exceed ten thousand dollars for any one taxable year" in the category of "small claims cases." A case involving the valuation method of farms, the classification of property, or property valuation should be excepted from this section.
19. §52.1.2 As written, this section gives OTA jurisdiction on any farm use valuation, classification or taxability case when the property owner has received a written decision from the assessor. This is contrary to the statutory procedures in W. Va. Code §§11-3-23a(b) and 11-3-24a, which require a ruling by the Tax Commissioner before such cases can be appealed to OTA.

20. §§52.1.3.b & 52.1.4.b the preferred verb to describe the closing of a session of a Board of Equalization and Review is "adjourn," not "go."
21. §52.2.2 The proposed style of an appeal of a ruling under W. Va. Code §11-3-24a raises the question of whether the Tax Commissioner is, in fact, a party in interest to such appeal.
22. §59.5 The numbering of the proposed rule skips from §52.4 to §59.5.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark S. Morton". The signature is written in a cursive style with some loops and flourishes.

Mark S. Morton  
General Counsel



Fenway Pollack, A M &lt;a.m.fenway.pollack@wv.gov&gt;

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**Fwd: OTA Procedural Rule**

2 messages

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**Mullins, Angela R** <angela.r.mullins@wv.gov>

Tue, Jan 24, 2023 at 5:01 PM

To: A M Fenway Pollack &lt;a.m.fenway.pollack@wv.gov&gt;, Crystal S Flanigan &lt;crystal.s.flanigan@wv.gov&gt;

Fenway and Crystal,

I just received this email concerning a comment about the Procedural Rule.

Angela

----- Forwarded message -----

From: **Griffith, Craig A.** <cgriffith@fbtlaw.com>

Date: Tue, Jan 24, 2023 at 4:57 PM

Subject: OTA Procedural Rule

To: angela.r.mullins@wv.gov &lt;angela.r.mullins@wv.gov&gt;

Angela,

I know that I'm a day late on this, but I want to provide one comment on the February 20<sup>th</sup> deadline under sections 121-52.1.3, Appeal pursuant to W. Va. Code section 11-3-23a(c). That provision states that any "taxpayer who has received a notice of increase" may initiate an appeal with OTA by filing an appeal by February 20<sup>th</sup>. In contrast, for industrial and natural resource properties valued by the Commissioner, section 121-52.1.4, Appeal pursuant to W. Va. Code section 11-3-23a(d), includes the February 20<sup>th</sup> appeal filing deadline with no mention of a notice of increase in assessment. Instead, the reference is to a notice of tentative appraisal.

West Virginia Code sections 11-3-23a(c)(2) and (d)(2) do not limit appeals to persons or entities who have received notices of increases in assessments. The notice of increase in assessment language in 11-3-23a pertains to use of the informal review process with either the assessor (11-3-23a(c)(1)) or the Tax Commissioner (11-3-23a(d)(1)). Both 11-3-23a(c)(2) and (d)(2) apply more broadly and do not require a notice of increase in order to appeal. Instead, any taxpayer that disagrees with a tentative appraised value provided by either the Assessor or the Tax Commissioner has the ability to appeal, regardless of whether a notice of increase in assessment has been received.

Craig A. Griffith  
Attorney at Law

United Bank Building  
500 Virginia Street, East, Suite 1100

Charleston, WV 25301-3207

# WEST VIRGINIA OFFICE OF



## TAX APPEALS

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

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May 18, 2023

Mark S. Morton, Esq.  
General Counsel  
West Virginia State Tax Department  
Legal Division  
P.O. Box 1005  
Charleston, WV 25324-1005

Dear Mr. Morton,

I'm writing in response to your comment letter of January 23, 2023, regarding the Office of Tax Appeals' new procedural rule pending at the West Virginia Secretary of State's office. We appreciate the time and effort you took to review the proposed rule. Below are this Tribunal's responses to your comments. Our responses have been numbered in the same manner as your comments.

1. The changes suggested by the comment have been made to Section 2.11.
2. The changes suggested by the comment have been made to Section 2.13.2.
3. The changes suggested by the comment have been made to Section 2.13.3.
4. The changes suggested by the comment have been made to Section 8.1.
5. The changes suggested by the comment have been made to Section 8.2.1.
6. The changes suggested by the comment have been made to Section 10.1.
7. The changes suggested by the comment have been made to Section 16.1.
8. The changes suggested by the comment have been made to Section 16.2.
9. Section 16.4 will be struck.
10. The changes suggested by the comment have been made to Section 18.1.
11. The changes suggested by the comment have been made to Section 18.2.2.
12. The changes suggested by the comment have been made to Section 18.2.3.i.


13. The changes suggested by the comment have been made to Section 36.1.
14. The changes suggested by the comment have been made to Section 37.4.
15. The changes suggested by the comment have been made to Section 37.7.
16. The changes suggested by the comment have been made to Section 41.5.1.
17. The changes suggested by the comment have been made to Section 47.1.
18. The changes suggested by the comment have been made to Section 51.2.1.
19. Regarding comment number 19, due to the passage of H.B. 3391, Section 52.1 of the proposed rule is going to be struck in its entirety.

20. Regarding your comment number 20, again, due to the passage of H.B. 3391, Section 52.1 of the proposed rule is going to be struck in its entirety.

21. In comment number 21, you question whether the Tax Commissioner would be a party in interest in appeals to the Office of Tax Appeals pursuant to West Virginia Code Section 11-3-24a. Based upon your comment, we have determined that our procedural rule is not the proper place to determine whom may or may not be a party to any particular appeal. As such we have struck Section 52.2 from our rule.

22. The changes suggested by the comment have been made to Section 59.5.

Sincerely,



A.M. "Fenway" Pollack  
Chief Administrative Law Judge

# WEST VIRGINIA OFFICE OF



## TAX APPEALS

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May 18, 2023

Craig A. Griffith, Esq.  
Frost Brown Todd, LLP  
United Bank Building  
500 Virginia Street East, Suite 1100  
Charleston, WV 25301-3207

Dear Mr. Griffith,

I'm writing regarding your comment to the Office of Tax Appeals' proposed procedural rule, received on Tuesday January 24, 2023. Despite the fact that your comment was received one day after the close of the comment period, we have given it due consideration. However, as you know, during the last legislative session House Bill 3391 was passed, establishing statutory deadlines for property tax appeals filed with this Tribunal. Due to the passage of H.B. 3391, we will be removing Section 52.1 from our procedural rule, thereby rendering your comment moot. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to be "A.M. 'Fenway' Pollack", written over a horizontal line.

A.M. "Fenway" Pollack  
Chief Administrative Law Judge