

REDACTED DECISION – DK#’S 22-058

**BY: CRYSTAL S. FLANIGAN, DEPUTY ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON APRIL 20, 2023
ISSUED ON OCTOBER 18, 2023**

**NOTE: THIS ADMINISTRATIVE DECISION WAS APPEALED BEYOND THE
OFFICE OF TAX APPEALS**

FINAL DECISION

On November 30, 2020, the Compliance Division of the West Virginia State Tax Commissioner’s Office (“the Tax Department” or “the Respondent”) issued a Denial or Reduction of Refund to the Petitioners, AAA and AAA AAA, (“Petitioners”). This refund denial was issued pursuant to the authority of the State Tax Commissioner, granted to him by the provisions of Chapter 11, Article 10 *et seq.*, of the West Virginia Code. The refund denial stated that the Petitioners’ refund had been reduced from a requested amount of \$xx,xxx.xx to zero for year ending December 31, 2017, and for a reduction from \$x,xxx.xx to zero for year ending December 31, 2018. The Petitioners received their refunds from the Respondent on March 16, 2022, for the 2017 tax year and on March 17, 2022, for the 2018 tax year after the IRS verified the Petitioners’ reduction in income. However, the Petitioners’ appeal does not originate from the refunds but instead from the amount of interest on their refunds.

The Petitioners timely filed their Petition for Appeal with this Tribunal on April 5, 2022.¹ Subsequently, notice of a hearing on the petition was sent to the parties and in accordance with the provisions of West Virginia Code Section 11-10A-10, a hearing was held on November 10, 2022. Thereafter, the parties submitted briefs containing proposed findings of fact and conclusions of

¹ At first glance, it appears the Petitioners would be well beyond the jurisdictional time frame to file a petition for appeal. However, West Virginia Code Sections 11-10-14 and 11-10-17 allow jurisdiction on issues of interest for a refund. W.Va. Code §11-10-14 and W.Va. Code §11-10-17.

law, with the evidence closed on April 20, 2022, and the matter became ripe for decision at that time.

FINDINGS OF FACT

1. The Petitioners were residents of BBB County, West Virginia during the tax years at issue and as such paid West Virginia state income taxes. Evid. Hr'g Tr. 130, Nov. 10, 2022.

2. On July 15, 2020, the Petitioners filed their amended 2017 Personal Income Tax Return in which they declared a Federal Adjusted Gross Income ("FAGI") of \$xx,xxx.xx and claimed a refund of \$xx,xxx.xx due to their FAGI being reduced by \$xxx,xxx.xx., Pet'rs' Ex. 2, Resp't's. Ex. 3, Hr'g Tr. 100-101.

3. On July 15, 2020, the Petitioners also filed their amended 2018 Personal Income Tax Return in which they declared FAGI of \$xxx,xxx.xx and claimed a refund of \$x,xxx.xx due to their FAGI being reduced by \$xx,xxx.xx. Pet'rs' Ex. 2, Hr'g Tr. 110, Resp't's Ex. 5.

4. On September 28, 2020, the Respondent requested a transcript from the IRS for the Petitioners' 2017 and 2018 tax years. Hr'g Tr. 72.

5. On September 29, 2020, the Respondent sent the Petitioners return change letters for both 2017 and 2018 tax years informing them that their refunds had changed due to their income changing. Pet'rs' Ex. 1.

6. On November 30, 2020, the Respondent requested a transcript from the IRS, for the second time, for the Petitioners' 2017 and 2018 tax years. Hr'g Tr. 72-73.

7. On November 30, 2020, the Respondent issued a denial or reduction of refund for tax years 2017 and 2018 based upon the information that the Petitioners had provided. The Denial or Reduction of Refund document asked the Petitioners to provide any documentation that would resolve the dispute. Pet'rs' Ex. 1 at 3.

8. On December 14, 2020, the Respondent requested a transcript from the IRS, for the third time, for the Petitioners' 2017 and 2018 tax years. Hr'g Tr. 73.

9. On December 20, 2021, a federal refund for the 2017 tax year was issued to the Petitioners in the amount of \$xx,xxx.xx. Pet'rs' Ex. 3, Resp't's Ex. 4.

10. On March 16, 2022, the Petitioners received a refund from the State of West Virginia for \$xx,xxx.xx which was 87 days after the IRS issued the federal refund on December 20, 2021. Pet. for appeal at 7.

11. The Respondent did not issue interest for the 2017 refund because the IRS had issued the federal refund on December 20, 2021, and the West Virginia refund was issued on March 16, 2022, which was less than 90 days (87 days) after the IRS issued the federal refund. W.Va. code 11-10-14 (1996). Pet. for Appeal at 7.

12. On November 29, 2021, the IRS issued a refund to the Petitioners for the 2018 tax year in the amount of \$xx,xxx.xx. Pet'rs' Ex. 3 at 2, Resp't's Ex. 6 at 2.

13. On March 17, 2022, the Petitioners received a refund of \$x,xxx.xx from the State of West Virginia for the 2018 tax year. The refund amount represented an over payment of \$x,xxx.xx plus interest of \$xx.xx which was \$xxx.xx more than the amount the Petitioners had claimed in their Amended 2018 Personal Income Tax Return. Pet. for appeal at 7 and 1.

14. The 2018 West Virginia refund was issued on March 17, 2022, which was more than 90 days (106 days) after the IRS issued the federal refund on November 29, 2021. Pet. for Appeal at 10. W.Va. § 11-10-14c(a)(1996). Pet'rs' Ex. 3, Resp't's Ex. 6.

15. The Respondent uses the date of the federal refund as the date of the final determination by the IRS and the date of filing for West Virginia amended returns with reducing FAGI. Hr'g Tr. 109.

16. The IRS took 18 months to process the Petitioners' federal returns. During this time the Respondent could not process their returns until the IRS made their final determinations on the reductions of the FAGI. Hr'g Tr. 118.

DISCUSSION

The issue to be decided in this matter is the amount of interest the Petitioners are entitled to on the refunds they received for the 2017 and 2018 tax years. On July 15, 2020, the Petitioners filed two claims for refund, one claim for the 2017 tax year and one claim for the 2018 tax year. The Petitioners' FAGI decreased from their original returns by \$xxx,xxx.xx for the 2017 tax year and their FAGI decreased by \$xx,xxx.xx for the 2018 tax year. The Respondent found that their claims for refund were not complete until the IRS made a final determination that the Petitioners' reduced FAGI was accurate. Thus, arguing that the 90-day period for interest payments runs from the date of the IRS verification and not when the amended returns were filed. The Petitioners received refunds in the amount of \$xx,xxx.xx for the 2017 tax year and \$x,xxx.xx for the 2018 tax year.² The Petitioners argue that they should receive interest from the date they filed their amended returns on July 15, 2020, through the date this Tribunal issues a final decision.

Pursuant to West Virginia Code Section 11-10-14c(a)(1996), the net income of a lawful, mathematically correct, uncontested claim for refund of personal income tax must be refunded within 90 days after the claim for the refund is issued. West Virginia Code Section 11-10-14c(a) states as follows:

(a) *General rule.*- The net amount of a lawful, mathematically correct, uncontested claim for refund of any tax imposed by article twenty-one of this chapter shall be refunded to the taxpayer within ninety days after such a claim for refund is filed with the tax commissioner. If the fund is not made to a taxpayer within the ninety days, the tax commissioner shall pay interest, at the rate specified in section seventeen-a of this article, for the period

² The Petitioners' refund of \$x,xxx.xx included \$x,xxx.xx plus interest of \$xx.xx. This amount also included an additional \$xxx.xx than the Petitioners had claimed.

commencing with the date the claim for refund was received by the tax commissioner until the date the state warrant for the refund amount is issued, notwithstanding any provisions of section seventeen of this article to the contrary.

W.Va. Code Ann. § 11-10-14c(a) (West).

The Petitioners argue that they filed their signed returns timely, lawfully, and mathematically correct, and that there was no reason to suspect that the returns were contested or fraudulent. They dispute the Respondent's requirement that the IRS verify reduced FAGI on an amended return. Although the Petitioners believe that the Respondent intentionally delayed processing their returns, CCC and DDD informed Mr. AAA several times that their refunds would be contingent upon the IRS approval of their corresponding self-calculated and self-reported federal amended returns. This information was repeatedly told to Mr. AAA during their recorded conversations. Pet'rs' Ex. 6, 7, 9, 10, 11, and 13. Both employees also testified to the IRS verification requirement during the evidentiary hearing.

CCC, an employee with Taxpayer Services, testified during the evidentiary hearing about requirements for an IRS transcript for amended returns:

MR. AAA: Okay, and we were talking on the 10th of June, you indicated that the State does not process amended returns when they indicate the taxpayer is due a refund until the State gets verification and taxpayer's adjusted gross income from the IRS. Is that correct?

CCC: As long as they are decreasing their AGF. [sic]

MR. AAA: Right, right. And you indicated that that's how you were trained, and others were trained in the department?

CCC: Yes, yes.

MR. AAA: To devise that return and then use that date when the IRS finally processed it at the federal level as the date of filing for West Virginia.

CCC: Yes. When you file an amended return and you're decreasing your federal adjusted gross income, we have to have verification from the IRS that they accepted that decrease.

Hr'g Tr. 15.

CCC testified that the IRS acceptance date is the same date the Respondent uses as the refund request date:

MR. AAA: Okay. That's --- well, I don't need to argue with you about, I guess. And you were trained to use --- also to use the IRS acceptance date as the date that the West Virginia return was to be filed --- presumed to have been filed.

CCC: Yes. When we get the transcript from the IRS and it shows the determination that they had indeed accepted that return, the date that they used is the date that we use to --- as a refund request date.

Hr'g Tr. 17.

QQQ, Tax Unit Supervisor, also testified that when the FAGI is being lowered on an amended return that an IRS transcript is required:

MR. AAA: The only time that a federal AGI account transcript is a necessary document to allow for the process and the filing of their return -- West Virginia personal income tax return --- is in the case when the taxpayer is filing an amended return and they are asking for the state to return their money to them.

MR. QQQ: If it's lowering the AGI, correct.

MR. AAA: If they're asking for money to be returned to them.

MR. QQQ: If it's lowering the AGI of the federal return, we do.

Hr'g Tr. 41.

Mr. QQQ further confirmed that these returns were considered contested which requires a verification from the IRS for decreasing AGIs:

MR. QQQ: The problem is that the change in the amount of the decreasing of the AGIs for both of those years is what would need to be verified in those situations.

MR. AAA: Mr. QQQ, our tax returns were ultimately processed just as we submitted them. Is that correct?

MR. QQQ: After we got the determination from the IRS, correct.

MR. AAA: So, okay. So, again, it's just they were contested.

MR. QQQ: They were contested, correct.

Hr'g Tr. 49.

Once the Petitioners filed their amended returns with decreasing FAGI, the Respondent ordered a transcript from the IRS on September 28, 2020, and issued return change letters to the Petitioners on September 29, 2020. These notified the Petitioners that a change with their refund had occurred. On November 30, 2020, the Respondent made a second request to the IRS for verification and sent the Petitioners a refund denial letter. On December 14, 2020, the Respondent made a third request to the IRS for a transcript. Mr. AAA had several conversations with the Respondent's employees where he was informed of the IRS verification requirement. The

Respondent did everything he could in trying to resolve the Petitioners' issue but had to wait for the IRS verification.

On December 16, 2021, the IRS issued a 2017 Account Transcript which confirmed the amount of the Petitioners' FAGI of \$xx,xxx.xx. The transcript showed that a federal refund would be issued on December 20, 2021. The Respondent issued a refund for \$xx,xxx.xx on March 16, 2022, which was 87 days after the IRS issued the federal refund on December 20, 2021. Because the West Virginia refund was issued in 87 days, the Respondent did not include interest under West Virginia Code Section 11-10-17. *See* W.Va. Code Ann. § 11-10-17 (2002).

On December 16, 2021, the IRS issued a 2018 Account Transcript which confirmed the amount of the Petitioners' FAGI of \$xxx,xxx.xx. The transcript showed that a federal refund was issued on November 29, 2021. The Respondent issued a refund for \$x,xxx.xx on March 17, 2022, which was 106 days after the federal issue date of November 29, 2021. Because the West Virginia refund was issued 106 days from the federal refund, the Respondent paid \$67.01 in interest to the Petitioners pursuant to West Virginia Code Section 11-10-14. *See* W.Va. Code Ann. § 11-10-14 (1996). The refund amount represented an over payment of \$x,xxx.xx plus interest of \$xx.xx which was \$xxx.xx more than the amount the Petitioners had claimed in their 2018 amended returns.

The Respondent issued the refunds to the Petitioners based on the exact dates that the IRS issued its refunds, just as the Respondent's employees had informed Mr. AAA. The Respondent was waiting alongside the Petitioners for the IRS to verify the decreasing FAGI. Once the income was verified, the Respondent issued the refunds, one with interest and one without interest. Refunds are discussed under West Virginia Code Section 11-10-14(a):

(a) Refunds or credits of overpayments. -- In the case of overpayment of any tax (or fee), additions to tax, penalties, or interest imposed by this article, or any of the other articles of this chapter, or of this code, to which this article is applicable, **the Tax Commissioner shall, subject to the**

provisions of this article, refund to the taxpayer the amount of the overpayment or, if the taxpayer so elects, apply the same as a credit against the taxpayer's liability for the tax for other periods. The refund or credit shall include any interest due the taxpayer under § 11-10-17 of this code. Emphasis added.

W.Va. Code Ann. §11-10-14(a)(West).

The Tax Commissioner's ability to determine a taxpayer's claim is set out in West Virginia Code Section 11-10-14(c) as follows:

(c) Claims for refund or credit. -- No refund or credit shall be made unless the taxpayer has timely filed a claim for refund or credit with the Tax Commissioner. A person against whom an assessment or administrative decision has become final is not entitled to file a claim for refund or credit with the Tax Commissioner as prescribed herein. **The Tax Commissioner shall determine the taxpayer's claim and notify the taxpayer in writing of his or her determination.** Emphasis added.

W.Va. Code Ann. §11-10-14(c) (West).

Interest given on refunds is discussed in West Virginia Code Section 11-10-1717(e)(1):

(1) No interest payable on tax refunded or credited within ninety days after claim for refund or credit is filed.- In the event of the overpayment of any tax administered under this article, except the tax imposed by articles twenty-one and twenty-four of this chapter, where the tax commissioner issues his or her requisition or establishes a credit as requested by the taxpayer **within ninety days after the date of the filing by the taxpayer of a claim for refund or credit, no interest shall be allowed under this section.** Emphasis added.

W. Va. Code Ann. § 11-10-17(e)(1) (2002).

Under 11-10-14(a), the Respondent "shall determine the taxpayer's claim" which he determined as the date of the IRS verification and used that date to determine when interest should begin accruing. The Respondent followed the above statute by providing interest outside of the 90-day deadline for the 2018 tax year and conversely, did not issue interest for refunds made within 90 days for the 2017 tax year.

Despite the facts and law discussed above, the Petitioners theorize that the Respondent selectively denies certain amended tax returns to purposely cause delays for refunds to taxpayers due to West Virginia Code Section 11-10-14c(c) which states:

(a)The payment of a claim for refund under this section shall not bar the tax commissioner from later issuing an assessment to recover any amount erroneously refunded, plus statutory interest and any applicable additions to tax, within two years after the date the refund was made: Provided, that if the refund or any part thereof was obtained by fraud, the assessment may be made at any time.

W. Va. Code Ann. § 11-10-14c (1996).

The Petitioners allege that the Respondent's requirement for the IRS to confirm reduced amended income is to circumvent this statute and cause them an intentional delay. They argue that the IRS could often take longer than two (2) years to process an amended return and therefore, this allegedly incentivizes the Respondent to "contest" certain state taxpayer's amended returns until the IRS processes the corresponding amended federal returns.³ By requiring this verification from the IRS, the Respondent is allegedly ensuring that it will not pay an erroneously paid refund claimed in an amended return, and thus, lose the ability to recover that payment.

The Petitioners misinterpret West Virginia Code Sections 11-10-14c(a) and 11-10-14c(c). They have not considered that this statute was designed to keep the Respondent from paying thousands of dollars in erroneous refunds and then becoming a collector of that refund which, they may never recover. This statute, perhaps most importantly, protects West Virginia taxpayers from receiving erroneous refunds paid to them but also from them paying additional monies in the form of interest and additions. The West Virginia Legislature, in its wisdom, has promulgated a statutory system for the benefit of all of West Virginia taxpayers. The Respondent is being fiscally prudent by requiring verification from the IRS for a contested claim for refund. Although the Petitioners

³ The Petitioners' returns were processed in approximately eighteen (18) months.

do not appear to see the benefit of the required IRS verification, they have no risk of having to pay back any monies due to it.

The Petitioners have not shown that the Respondent was trying to intentionally harm him for verifying that their FAGI had been reduced approximately \$xxx,xxx.xx for two tax years. In fact, the Respondent's witnesses all testified that this has been a process for verifying amended returns with the IRS for many years. The Petitioners have not been "singled out" and intentionally harmed. Perhaps most importantly, this Tribunal finds that verifying reduced FAGI by the IRS would appear to save West Virginia taxpayers the risk of providing personal income tax refunds that are possibly inaccurate, conflicting, or false that may not be recovered once erroneously given.

The Petitioners claim that failure to calculate and pay interest from July 15, 2020, is an impingement on the ninety (90) day requirement of West Virginia Code 11-10-14c(a)(1996) and are seeking payment of interest on both refunds back to July 15, 2020. *See* W.Va. Code Ann. §11-10-14c(a) (1996). The Petitioners filed their amended returns on July 15, 2020, and they argue that these returns were mathematically correct, signed, and ultimately were verified to have no issues, and given the refunds they sought. They further argue that no specific West Virginia statute or regulation requires an IRS transcript to confirm a decreasing FAGI for amended returns.

For a refund to be paid, under West Virginia Code Section 11-10-14c(a) "a lawful, mathematically correct, **uncontested** claim for refund" must be filed. *Id.* Emphasis added. The words "uncontested" and "contested" are not defined in Chapter Eleven of the West Virginia Code. Under statutory interpretation, when a word is not defined, an agency may use its common, ordinary meaning. Therefore, we must look at the root word "contested." Dictionary.com defines the word "contested" as "involving a disagreement or dispute."⁴ Webster's Dictionary defines

⁴ [Contested Definition & Meaning | Dictionary.com](#)

“contested” as to make the subject of dispute, contention, or litigation.⁵ This Tribunal finds that the word “contested” under its common, ordinary meaning means disagreement or disputed. Thus, the word “uncontested” simply means no dispute or disagreement under its common, ordinary meaning.

The Petitioners filed an original return with one number for their FAGI and then filed an amended return with a reduced FAGI. By their very filing of amended returns, the Petitioners themselves disagree with the previous number in their original tax filings. This difference is a contest between one number over another number. Therefore, this Tribunal finds that it is reasonable for an amended return to be “contested” due to decreasing FAGI in an amended return.

The Respondent sought copies of the IRS Account Transcripts three times, on September 29, 2020, November 30, 2020, and December 20, 2020, to verify the Petitioners’ entitlement to the refunds and amounts claimed. Upon verification from the IRS, the Respondent paid the 2017 claim 87 days after the IRS issued the federal refund. According to the Respondent, there is no refund of interest due pursuant to West Virginia Code Section 11-10-17. *See* W.Va. Code Ann. § 11-10-17 (2002). The Respondent paid the 2018 claim 106 days after the IRS issued the federal refund. Because this is more than 90 days under West Virginia Code Section 11-10-17, the Respondent paid interest to the Petitioners. *Id.*

Finally, the Petitioners argue that the Respondent failed to provide them with written notice as to why their returns were being denied and why the returns were incorrect. However, on September 29, 2020, the Respondent issued two return change letters for the 2017 and 2018 tax years. Both return change letters stated that their West Virginia taxable income had changed. On

⁵ [Contest Definition & Meaning - Merriam-Webster](#)

November 30, 2020, the Respondent issued to the Petitioners a Denial of Refund, letter ID number L2024231968, for tax years 2017 and 2018.

The Petitioners take issue that the November 30, 2020, refund denial letter states “received a letter previously that explains the reasons for this reduction or denial of your refund.” The Petitioners argue that they were never given notice as to why his refund was denied. However, Mr. QQQ testified that the Petitioners were given the two return change letters prior to the November 30, 2020, refund denial letter which the Petitioners concede that they received. The Petitioners take the position that the return change letters do not properly detail the errors on their amended tax returns.

While additional detail in return change letters and refund denial letters may be helpful, the return change letters and refund denial letter sent to the Petitioners are sufficient notice. In OTA decision docket number 19-421, this Tribunal found that return change letters and notices of assessment were adequate notice for a taxpayer to know that a problem existed with their return. Although in docket number 19-421, it was a notice of assessment and not a refund denial sent to those Petitioners, we find the same in this matter. Accordingly, Petitioners’ notice argument is without merit.

For the reasons mentioned above, under West Virginia Code Section 11-10A-10(e), this Tribunal finds that the Petitioners have failed to meet their burden of proof in this matter. W. Va. Code § 11-10A-10(e) (2002).

CONCLUSIONS OF LAW

Based upon all the above, it **FINDS** and **CONCLUDES** that:

1. It is the duty of the Tax Commissioner to see that the laws concerning the assessment and collection of all taxes and levies are faithfully enforced. *See* W.Va. Code Ann. § 11-1-2 (West 2010).

2. If the evidence equally supports both sides, the party that bears the burden of proof has not met its burden. *Adkins v. Smith*, 142 W.Va. 772, 98 S.E.2d 712 (1957).

3. “Resident individual” means an individual who is domiciled in West Virginia unless he or she maintains no permanent place of abode in West Virginia, maintains a permanent place of abode in another state, and spends in the aggregate not more than thirty (30) days of the taxable year in West Virginia. W.Va. Code § 11-21-7 (1961).

4. The West Virginia adjusted gross income of a resident individual means his or her federal adjusted gross income as defined in the laws of the United States for the taxable year at issue. W.Va. Code § 11-21-12(a)(2019).

5. If the amount of a taxpayer’s federal taxable income reported on his or her federal income tax return for any taxable year is changed or corrected by the IRS, then the taxpayer must report such a change or correction no later than 90 days after the IRS’s final determination of such change or correction, and the taxpayer must either concede the accuracy of the final determination or state how the final federal determination is erroneous. W.Va. Code § 11-21-59(a)(2019).

6. If the IRS makes a change or correction that lowers the taxpayer’s federal adjusted taxable income, then the taxpayer may file a claim for refund resulting from the change or correction within two years from the date of the final determination. W.Va. Code § 11-21-59(b)(1) (2019).

7. No refund shall be due to a taxpayer unless the taxpayer has filed an uncontested claim for refund in such form and in such manner as the Respondent requires. W.Va. Code R. 110-10L-4.1 (2015).

8. To be uncontested, a claim for refund must be timely filed, properly signed, and supported by all necessary documentation. W.Va. Code § 11-10-14c(b)(2) (1996).

9. The general rule is that the amount of an uncontested claim for refund of any tax imposed by the West Virginia Personal Income Tax Act shall be refunded to the taxpayer within ninety (90) days after such a claim for refund is filed with the State Tax Department. W.Va. Code § 11-10-14c(a) (1996).

10. A lawfully, mathematically, correct, uncontested claim for refund is a claim for refund that is timely filed, signed by the appropriate taxpayer or taxpayers, mathematically correct, supported by necessary documentation, and that appears on its face to be correct. W. Va. Code § 11-20-14c(b)(2) (1996).

11. Tax returns are considered filed when the returns appear on their face to be correct and are supported by any necessary documentation. W.Va. Code § 11-10-14c(b)(2) (1996).

12. No interest is payable on tax that is refunded within ninety (90) days after a complete, verified and valid claim for refund is filed. W.Va. Code § 11-10-17(e) (2002).

13. In a hearing before the West Virginia Office of Tax Appeals on a petition for appeal, the burden of proof is upon the Petitioners to show that any refund denial against them is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code Ann. § 11-10A-10(e) (West 2010) and W. Va. Code R. §§ 121-1-63.1 and 69.2 (1993).⁶

⁶At the time of the evidentiary hearing held on November 10, 2022, these Rules were in effect. Burden of proof is now discussed in West Virginia Code of State Rules Section 121-1-37.5. W.Va. Code R. § 121-1-37.5 (2023).

14. In this matter, the Petitioners have not presented any evidence that the interest they received from the Respondent did not comply with West Virginia Code Sections 11-10-14 and 11-10-17. W.Va. Code § 11-10-14 (1996) and W. Va. Code § 11-10-17 (2002).

DISPOSITION

Based upon the above, it is the **FINAL DECISION** of the West Virginia Office of Tax Appeals that the interest accrual from the filing date of the amended returns that the Petitioners seek is hereby **DENIED**.

ORDER DENYING THE PETITIONERS' MOTION TO REOPEN AND ALLOW THE PETITIONERS TO CONDUCT DISCOVERY AS TO THE POSSIBLE EXISTENCE OF MISCONDUCT

On February 22, 2023, the Petitioners filed a motion to reopen and allow discovery into the possible existence of misconduct. In their motion, the Petitioners concede that the motion is not relevant to the issue of whether they are entitled to interest for refunds for the 2017 and 2018 tax years. The substance of their motion does not concern the appeal but rather seeks a potential class action lawsuit. The relevance of the Petitioners motion is absent and therefore, without merit. Most importantly, the Office of Tax Appeals does not have the jurisdiction necessary to facilitate any potential class action under West Virginia Code Section 11-10A-8 which states the following:

The Office of Tax Appeals has exclusive and original jurisdiction to hear and determine all:

- (1) Appeals from tax assessments issued by the Tax Commissioner pursuant to article ten of this chapter;
- (2) Appeals from decisions or orders of the Tax Commissioner denying refunds or credits for all taxes administered in accordance with the provisions of § 11-10-1 *et seq.* of this code;
- (3) Appeals from orders of the Tax Commissioner denying, suspending, revoking, refusing to renew any license, or imposing any civil money penalty for violating the provisions of any licensing law administered by the Tax Commissioner;

- (4) Questions presented when a hearing is requested pursuant to the provisions of any article of this chapter which is administered by the provisions of § 11-10-1 *et seq.* of this code;
- (5) Matters which the Tax Division is required by statute or legislatively approved rules to hear, except employee grievances filed pursuant to § 6C-2-1 *et seq.* of this code;
- (6) Other matters which may be conferred on the office of tax appeals by statute or legislatively approved rules; and
- (7) Appeals by any party aggrieved by the valuation of real property and personal property tax assessments and classifications or taxability as set forth in § 11-3-1 *et. seq.* of this code.

W. Va. Code Ann. § 11-10A-8 (West).

The proper jurisdiction for class action lawsuits lies outside this Tribunal. Accordingly, the Petitioners' Motion to Reopen Discovery is hereby **DENIED**.

The Petitioners also made a FOIA request directed to the Respondent in their motion. The Office of Tax Appeals does not have jurisdiction over such requests pursuant to West Virginia Code Section 11-10A-8. As such, this request is also **DENIED**.

**ORDER DENYING THE RESPONDENT'S MOTION TO STRIKE AND
MOTION FOR PROTECTIVE ORDER AS MOOT**

On December 22, 2022, the Respondent filed a Motion to Strike and Motion for Protective Order. This Motion is now moot due to this Tribunal's ruling in favor of the Respondent. As such, this Motion is hereby **DENIED**.

WEST VIRGINIA OFFICE OF TAX APPEALS

Crystal S. Flanigan
Deputy Chief Administrative Law Judge

Date