

REDACTED DECISION – DK# 24-148

**BY: CRYSTAL S. FLANIGAN, DEPUTY ADMINISTRATIVE LAW JUDGE
SUBMITTED FOR DECISION ON AUGUST 5, 2025
ISSUED ON FEBRUARY 3, 2026**

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

FINAL DECISION

On July 22, 2024, the Tax Account Administration 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, ("Petitioners").¹ 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 the requested amount of \$6,012.00 to zero for year ending December 31, 2022. The Petitioners received a refund from the Respondent on August 20, 2024, upon submitting the IRS transcript. Although the Petitioners were granted their refund request, the refund did not include any interest accrual. The Petitioners concede they received the requested refund and the primary issue on appeal is their entitlement to interest on the refund.²

The Petitioners timely filed their Petition for Appeal with this Tribunal on October 7, 2024. 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 April 25, 2025.

¹AAA (hereinafter "Mr. AAA") was the sole witness for the Petitioners during the Evidentiary Hearing and the primary person who appeared during the telephonic status conferences in this matter.

²The Petitioners also argue the issue of a Circuit Court filing fee that they want refunded. The Petitioners filed a case in Circuit Court about their refund denial and were dismissed. Their filing fee was not refunded by the Circuit Clerk. The Petitioners argue this issue again in their post-hearing brief. Prior to the Evidentiary Hearing in this matter, this Tribunal held several telephonic status conferences with the parties and informed Mr. AAA that it did not have jurisdiction to order the Circuit Clerk to refund the filing fee. Despite being informed that this fee is outside the jurisdiction of the Office of Tax Appeals, the Petitioners return to this issue. This Tribunal's lack of jurisdiction to order the Circuit Clerk to refund a filing fee has not changed and accordingly, it cannot order a refund in this decision. *See* W.Va. Code § 11-10A-8 (West 2021); *see also*, *Petitioners' Briefing Statement Dated March 26, 2025*.

Thereafter, the parties submitted briefs containing proposed findings of fact and conclusions of law, with the evidence closed on August 5, 2025, and the matter became ripe for decision at that time.

FINDINGS OF FACT

1. The Petitioners are resident individuals of Elkins, Randolph Conty, West Virginia. Hr'g Tr. 25:16.

2. On February 27, 2024, the Petitioners hand delivered their 2022 Amended Federal and West Virginia Personal Income Tax Returns into each individual office. Hr'g Tr. 13:13-18, 26:7-11, 18-19, 39:5-8.

3. On March 18, 2024, the Respondent issued a return change letter to the Petitioners regarding changes made to West Virginia taxable income for the 2022 West Virginia Amended Personal Income Tax Return. Pet'rs' Ex. 4.

4. On March 29, 2024, August 2, 2024, and August 5, 2024, the Respondent's agents informed Mr. AAA that an IRS transcript accepting the change to his federal taxable income was required before the 2022 West Virginia Amended Return could be accepted. Hr'g Tr. 38:3-9.

5. On July 22, 2024, the Respondent issued a Denial or Reduction of Refund \$6,012.00. Pet'rs' Ex. 4.

6. On August 7, 2024, Mr. AAA hand delivered copies of the Petitioners' IRS transcript and federal refund checks to the Tax Department. Hr'g. Tr. 38:10-14, Pet'rs' Ex. 7.

7. On August 20, 2024, the Respondent issued the refund due to the Petitioners without interest. Hr'g Tr.15:15-17, 35:18-23.

8. On October 1, 2024, Mr. AAA received an email from Vickie Hager denying his request for interest on his refund. Resp't's Ex.1.

9. On October 7, 2024, the Petitioners filed their Petition for Appeal seeking interest on the refund from the filing date of the 2022 Amended West Virginia Return.

DISCUSSION

The issue to be decided in this matter is whether the Petitioners are entitled to interest on the refund received from the Respondent for the 2022 tax year. The Respondent found that their claims for refund were incomplete until the Petitioners provided IRS verification (i.e., an IRS transcript) and the IRS made a final determination that the Petitioners' reduced Federal Adjusted Gross Income (hereinafter "FAGI") was accurate. The Respondent argues that the 90-day period for interest payments runs from the date the Respondent receives the Petitioners' IRS transcript and not when the amended return was originally filed. The Petitioners argue that they should receive interest from the date they filed their amended return on February 27, 2024.³

In this matter, the IRS changed the Petitioners' FAGI to a lower amount and provided them with refunds and interest on their refunds. West Virginia Code Section 11-21-59(a) describes what a taxpayer must provide to the Tax Department if the IRS changes or corrects a taxpayer's reported income:

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.

³The Petitioners mistakenly argue that because the IRS provided them interest, that West Virginia is also required to provide them interest. However, the Petitioners did not provide any US Constitutional provision, federal statute, federal case, or federal treaty that preempts West Virginia law, nor can this Tribunal locate a law that does so. Under the facts of this case, preemption does not apply and West Virginia law controls in this matter.

W.Va. Code Ann. § 11-21-59(a) (West 2019).

Pursuant to West Virginia Code Section 11-10-14c(a), the net amount 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 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 1996).

“A ‘lawful, mathematically correct, uncontested claim for refund’ is one that is timely filed; is signed by the appropriate taxpayer or taxpayers; is mathematically correct; is supported by necessary documentation; and appears on its face to be correct.” West Virginia Code Ann. § 11-10-14c(b)(2). *See also* W.Va. Code R. 110-10-4.1 (West 2015).

The Petitioners argue that because they filed their signed return timely, lawfully, were mathematically correct, and that the IRS ultimately granted their interest, the Respondent should also provide interest from the date of their amended West Virginia return filing. They dispute the Respondent’s requirement that the IRS verify the FAGI.⁴ The Respondent informed Mr. AAA that

⁴Although the Petitioners believe that the Respondent intentionally changed their signature and date on the amended return, there is no evidence of such conduct. The Petitioners further seek this Tribunal to fine the Respondent for contempt and recommends that we appoint a Special Prosecutor to confirm his findings. The West Virginia Office of Tax Appeals is a statutorily created agency of limited jurisdiction, not a court of general jurisdiction, and does not have the legal authority to fine the Respondent for contempt or appoint a Special Prosecutor. W.Va. Code Ann. § 11-10A-8 (West 2021); *see also* *Petitioners’ Briefing Statement Dated March 26, 2025*, Hr’g Tr. 44:17-23-45:1-11.

approval for a refund for their West Virginia amended return would be contingent upon the IRS approval of their corresponding federal amended return. Melissa Clay (hereinafter “Ms. Clay”) testified on behalf of the Respondent regarding the IRS transcript requirement for amended returns during the evidentiary hearing. Mr. AAA had at least three conversations with the Respondent’s employees where he was informed of the IRS verification requirement.

Ultimately, the Petitioners obtained an IRS transcript and on August 7, 2024, Mr. AAA hand delivered copies of the IRS refund checks and a copy of the IRS transcript to the Tax Department. On August 20, 2024, the Respondent issued a refund to the Petitioners, which was 13 days after receiving the IRS transcript. Because the West Virginia refund was issued in 13 days, the Respondent did not include interest pursuant to West Virginia Code Section 11-10-17(e)(1). W.Va. Code Ann. § 11-10-17(e)(1)(West 2002).

Interest given on refunds is discussed in West Virginia Code Section 11-10-17
17(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) (West 2002).

The Respondent issued the refunds to the Petitioners based on the IRS transcript that verified the amended adjusted gross income, just as the Respondent’s employees had informed Mr. AAA. Once the income was verified, the Respondent issued the refund. 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.

W.Va. Code Ann. § 11-10-14(a) (West 2019).

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.

W.Va. Code Ann. § 11-10-14(c) (West 2019).

The Petitioners have not shown that the Respondent was trying to intentionally harm them by verifying that their FAGI had been reduced. Ms. Clay testified that this has been a process for verifying amended returns with the IRS for many years and with every taxpayer seeking amendments. The Respondent 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 be recovered once erroneously given. W.Va. Code Ann. § 11-10-14c(c)(c) (West 1996).

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. W.Va. Code Ann. § 11-10-14c(a) (West 1996). 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.”⁵ Webster’s Dictionary defines “contested” as to make the subject of dispute, contention, or litigation.⁶ 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 an amended return, 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 an amended return to be “contested” due to decreasing FAGI in an amended return. Furthermore, requiring necessary documentation such as an IRS transcript for a claim for refund is not only provided under West Virginia Code Section 11-10-14c(b)(2) as discussed *supra* but has the ancillary benefit of avoiding erroneous refunds given to taxpayers. W.Va. Code Ann. § 11-10-14c(b)(2) (West 1996), *see also* W.Va. Code Ann. § 11-10-14c(c) (West 1996).

Upon verification from the IRS, the Respondent paid the 2022 claim 13 days after the Petitioners provided the IRS transcript. Accordingly, there is no refund of interest due pursuant to West Virginia Code Section 11-10-17. *See* W.Va. Code Ann. § 11-10-17 (West 2002).

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 Ann. § 11-10A-10(e) (West 2002).

⁵ “Contested,” *Dictionary.com* (2026), <https://www.dictionary.com/browse/contested> *Contested Definition & Meaning | Dictionary.com*

⁶ “Contested,” *Merriam-Webster.com Dictionary* (2026), <https://www.merriam-webster.com/dictionary/contested>.

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 (West 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 Ann. § 11-21-7 (West 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 Ann. § 11-21-12(a)(West 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 Ann. § 11-21-59(a) (West 2019), W.Va. Code R. § 110-21-59.1.

6. 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. 110-10-4.1(West 2015).

7. 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 Ann. § 11-10-14c(a) (West 1996).

8. 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 Ann. § 11-10-14c(b)(2) (West 1996).

9. 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 Ann. § 11-10-17(e) (West 2002).

10. 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 (West 1993).

11. 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 Ann. § 11-10-14 (West 1996) and W.Va. Code Ann. § 11-10-17 (West 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 2022 Amended West Virginia Return that the Petitioners seek is hereby **DENIED**.

WEST VIRGINIA OFFICE OF TAX APPEALS

Crystal S. Flanigan
Deputy Chief Administrative Law Judge

February 3, 2026
Date