

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2014



ENROLLED

Senate Bill No. 601

(BY SENATOR PALUMBO)

[PASSED MARCH 8, 2014; IN EFFECT NINETY DAYS FROM PASSAGE.]

E N R O L L E D

Senate Bill No. 601

(BY SENATOR PALUMBO)

[Passed March 8, 2014; in effect ninety days from passage.]

AN ACT to amend and reenact §11-3-25 of the Code of West Virginia, 1931, as amended, relating to appeals of assessments by the Board of Equalization and Review or order of the Board of Assessment Appeals; removing a phrase giving appeal authority to an entity's agent, which the Supreme Court of Appeals of West Virginia interpreted as unconstitutional; and clarifying that appeals must be made by attorneys.

Be it enacted by the Legislature of West Virginia:

That §11-3-25 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-25. Relief in circuit court against erroneous assessment.

1 (a) Any person claiming to be aggrieved by any
2 assessment in any land or personal property book of any
3 county who shall have appeared and contested the valuation
4 as provided in section twenty-four or twenty-four-a of this
5 article, or whose assessment has been raised by the county
6 commission sitting as a Board of Equalization and Review
7 above the assessment fixed by the assessor may, at any time

8 up to thirty days after the adjournment of the board sitting as
9 a Board of Equalization and Review, or at any time up to
10 thirty days after the order of the Board of Assessment
11 Appeals is served on the parties, apply for relief to the circuit
12 court of the county in which the property books are made out;
13 but any person applying for relief in circuit court shall, before
14 any application is heard, give ten days' notice to the
15 prosecuting attorney of the county, whose duty it shall be to
16 attend to the interests of the state, county and district in the
17 matter, and the prosecuting attorney shall give at least five
18 days' notice of hearing to the Tax Commissioner.

19 (b) The right of appeal from any assessment by the Board
20 of Equalization and Review or order of the Board of
21 Assessment Appeals as provided in this section may be taken
22 either by the applicant or by the state, and in case the
23 applicant, by his or her attorney, or in the case of the state, by
24 its prosecuting attorney or other attorney representing the Tax
25 Commissioner. The party desiring to take an appeal from the
26 decision of either board shall have the evidence taken at the
27 hearing of the application before either board, including a
28 transcript of all testimony and all papers, motions,
29 documents, evidence and records as were before the board,
30 certified by the county clerk and transmitted to the circuit
31 court as provided in section four, article three, chapter fifty-
32 eight of this code, except that, any other provision of this
33 code notwithstanding, the evidence shall be certified and
34 transmitted within thirty days after the petition for appeal is
35 filed with the court or judge, in vacation.

36 (c) If there was an appearance by or on behalf of the
37 taxpayer before either board, or if actual notice, certified by
38 the board, was given to the taxpayer, the appeal, when
39 allowed by the court or judge, in vacation, shall be
40 determined by the court from the record as so certified:
41 *Provided*, That in cases where the court determines that the

42 record made before the board is inadequate as a result of the
43 parties having had insufficient time to present evidence at the
44 hearing before the board to make a proper record, as a result
45 of the parties having received insufficient notice of changes
46 in the assessed value of the property and the reason or
47 reasons for the changes to make a proper record at the
48 hearing before the board, as a result of irregularities in the
49 procedures followed at the hearing before the board, or for
50 any other reason not involving the negligence of the party
51 alleging that the record is inadequate, the court may remand
52 the appeal back to the county commission of the county in
53 which the property is located, even after the county
54 commission has adjourned *sine die* as a Board of
55 Equalization and Review or a Board of Assessment Appeals
56 for the tax year in which the appeal arose, for the purpose of
57 developing an adequate record upon which the appeal can be
58 decided. The county commission shall schedule a hearing for
59 the purpose of taking additional evidence at any time within
60 ninety days of the remand order that is convenient for the
61 county commission and for the parties to the appeal. If,
62 however, there was no actual notice to the taxpayer, and no
63 appearance by or on behalf of the taxpayer before the board,
64 or if a question of classification or taxability is presented, the
65 matter shall be heard de novo by the circuit court.

66 (d) If, upon the hearing of appeal, it is determined that
67 any property has been assessed at more than sixty percent of
68 its true and actual value determined as provided in this
69 chapter, the circuit court shall, by an order entered of record,
70 correct the assessment, and fix the assessed value of the
71 property at sixty percent of its true and actual value. A copy
72 of the order or orders entered by the circuit court reducing the
73 valuation shall be certified to the Auditor, if the order or
74 orders pertain to real property, by the clerk within twenty
75 days after the entering of the same, and every order or
76 judgment shall show that the prosecuting attorney or Tax

77 Commissioner was present and defended the interest of the
78 state, county and district. If it be ascertained that any
79 property has been valued too high, and that the taxpayer has
80 paid the excess tax, it shall be refunded or credited to the
81 taxpayer in accordance with the provisions of section twenty-
82 five-a of this article, and if not paid, he or she shall be
83 relieved from the payment thereof. If it is ascertained that
84 any property is valued too low, the circuit court shall, by an
85 order entered of record, correct the valuation and fix it at
86 sixty percent of its true and actual value. A copy of any order
87 entered by any circuit court increasing the valuation of
88 property shall be certified within twenty days, if the order
89 pertains to real property, to the Auditor, the county clerk and
90 the sheriff. However, if the order pertains only to personal
91 property, then the copy shall be certified within twenty days
92 to the county clerk and to the sheriff and it shall be the duty
93 of the Auditor, the county clerk and the sheriff to charge the
94 taxpayer affected with the increase of taxes occasioned by the
95 increase of valuation by applying the rate of levies for every
96 purpose in the district where the property is situated for the
97 current year. The order shall also be filed in the office of the
98 Auditor and clerk of the county commission. The circuit
99 court shall review the record submitted from the board. If the
100 court determines that the record is adequate, it shall establish
101 a briefing and argument schedule that will result in the appeal
102 being submitted to the court for decision within a reasonable
103 time, but not to exceed eight months after the appeal is filed.
104 All final decisions or orders of the circuit court shall be
105 issued within a reasonable time, not to exceed ninety days,
106 from the date the last brief is filed and the case is submitted
107 to the court for decision. The state or the aggrieved taxpayer
108 may appeal a question of valuation to the Supreme Court of
109 Appeals if the assessed value of the property is \$50,000 or
110 more, and either party may appeal a question of classification
111 or taxability.

112 (e) All persons applying for relief to the circuit court
113 under this section shall be governed by the same
114 presumptions, burdens and standards of proof as established
115 by law for taxpayers applying for such relief.

116 (f) *Effective date.* – The amendments to this section
117 enacted in 2010 shall apply to tax years beginning after
118 December 31, 2011.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman Senate Committee

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

The within this
the Day of, 2014.

.....
Governor