

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3391

By Delegates Householder and Gearheart

[Introduced February 13, 2023; Referred to the
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §11-3-25b; and to amend and reenact §11-10A-19 of said code, all relating to
3 appeals to the Office of Tax Appeals; establishing filing deadlines for appeals of property
4 tax valuations and issues involving property tax classification and taxability to the West
5 Virginia Office of Tax Appeals, providing that appeal petitions of property tax issues to the
6 West Virginia Office of Tax Appeals shall be heard *de novo*, providing a time frame for
7 hearings before the Office of Tax Appeals regarding property tax matters, clarifying that the
8 Intermediate Court of Appeals has jurisdiction to hear appeals from a final decision of a
9 property tax matter by the Office of Tax Appeals, and clarifying that further appeals are to
10 the Supreme Court of Appeals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-25b. Appeal to Office of Tax Appeals.

1 (a) In all cases involving appeal to the Office of Tax Appeals from a property tax valuation
2 pursuant to §11-3-15i or §11-3-23a of this code, or from an order of a County Commission sitting
3 as a Board of Equalization and Review pursuant to §11-3-24 of this code, the appeal petition must
4 be filed with the Office of Tax Appeals by March 31 of the property tax year as defined in §11-3-1 of
5 this code to be considered timely filed. If a petition of appeal is not filed with the Office of Tax
6 Appeals by March 31 of the property tax year, then it shall be dismissed as untimely.

7 (b) In all cases involving appeal to the Office of Tax Appeals from a property tax ruling on
8 taxability or classification by the Tax Commissioner pursuant to §11-3-24a of this code, the appeal
9 petition must be filed within 30 days after receiving written notice of the Tax Commissioner's ruling.
10 If a petition of appeal is not timely filed with the Office of Tax Appeals, then it shall be dismissed.

11 (c) In all cases involving property tax matters brought before the Office of Tax Appeals
12 pursuant to subsections (a) and (b) of this section, the hearing before the Office of Tax Appeals
13 shall be *de novo* as provided in §11-10A-10 of this code. Notwithstanding the provisions of §11-

14 10A-10 of this code, a property tax appeal to the Office of Tax Appeals involving valuation,
15 classification, or taxability may be set for hearing within 90 days of the due date of the answer
16 unless continued by order of the Office of Tax Appeals for good cause.

17 (d) The provisions of this section shall be effective for all property tax appeals to the Office
18 of Tax Appeals made on or after January 1, 2023.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-19. Judicial review of office of tax appeals decisions.

1 (a) Either the taxpayer or the commissioner, or both, or in the case of property taxes the
2 county assessor, or county commission, may appeal the final decision or order of the ~~office of tax~~
3 ~~appeals~~ Office of Tax Appeals by taking an appeal to the ~~circuit courts~~ Intermediate Court of
4 Appeals of this state within ~~60~~ 30 days after ~~being served with notice entry~~ of the final decision or
5 order.

6 (b) ~~The office of tax appeals~~ Office of Tax Appeals may not be made a party in any judicial
7 review of a decision or order it issued.

8 ~~(c)(1) If the taxpayer appeals, the appeal may be taken in the circuit court of Kanawha~~
9 ~~County or any county:~~

10 ~~(A) In which the activity sought to be taxed was engaged in;~~

11 ~~(B) In which the taxpayer resides;~~

12 ~~(C) In which the will of the decedent was probated or letters of administration granted; or~~

13 ~~(D) In which the real or personal property is assessed.~~

14 ~~(2) If the Tax Commissioner appeals, the appeal may be taken in Kanawha County:~~

15 ~~Provided, That the taxpayer shall have the right to remove the appeal to the county:~~

16 ~~(A) Wherein the activity sought to be taxed was engaged in;~~

17 ~~(B) Wherein the taxpayer resides;~~

18 ~~(C) Wherein the will of the decedent was probated or letters of administration granted; or~~

19 ~~(D) Wherein the real or personal property is assessed.~~

20 ~~(3) In the event parties appeal to different circuit courts, the appeals shall be consolidated.~~
21 ~~In the absence of agreement by the parties, the appeal shall be consolidated in the circuit court of~~
22 ~~the county in which the taxpayer filed the petition for appeal~~

23 (d) ~~(c)~~ The appeal proceeding shall be instituted by filing a petition for notice of appeal with
24 the circuit court, ~~or the judge thereof in vacation~~ Intermediate Court of Appeals, within the ~~60~~ 30
25 day period prescribed in subsection (a) of this section. ~~A copy of the petition for appeal shall be~~
26 ~~served on all parties appearing of record, other than the party appealing, by registered or certified~~
27 ~~mail. The petition for appeal shall state whether the appeal is taken on questions of law or~~
28 ~~questions of fact, or both, and set forth with particularity the items of the decision objected to,~~
29 ~~together with the reasons for the objections~~

30 ~~(e)~~(d) If the appeal is of an assessment, except a jeopardy assessment for which security
31 in the amount thereof was previously filed with the Tax Commissioner, then within 90 days after the
32 ~~petition for~~ notice of appeal is filed, or sooner if ordered by the circuit court Intermediate Court of
33 Appeals, the petitioner shall file with the clerk of the circuit court Intermediate Court of Appeals a
34 cash bond or a corporate surety bond approved by the clerk. The surety must be qualified to do
35 business in this state. These bonds shall be conditioned upon the petitioner performing the orders
36 of the court. The penalty of this bond shall be not less than the total amount of tax or revenue plus
37 additions to tax, penalties, and interest for which the taxpayer was found liable in the
38 administrative decision of the office of tax appeals. Notwithstanding the foregoing and in lieu of the
39 bond, the Tax Commissioner, upon application of the petitioner, may upon a sufficient showing by
40 the taxpayer, certify to the clerk of the circuit court Intermediate Court of Appeals that the assets of
41 the taxpayer are adequate to secure performance of the orders of the court: *Provided*, That if the
42 Tax Commissioner refuses to certify that the assets of the taxpayer or other indemnification are
43 adequate to secure performance of the orders of the court, then the taxpayer may apply to the
44 circuit court Intermediate Court of Appeals for the certification. No bond may be required of the Tax
45 Commissioner.

46 ~~(f)(e)~~ The ~~circuit court~~ Intermediate Court of Appeals shall hear the appeal as provided in
47 §29A-5-4 of this code: *Provided*, That when the appeal is to review a decision or order on a petition
48 for refund or credit, the court may determine the legal rights of the parties, but in no event shall it
49 enter a judgment for money.

50 ~~(g)(f)~~ Unless the Tax Commissioner appeals an adverse court decision, the commissioner,
51 upon receipt of the certified order of the court, shall promptly correct his or her assessment or
52 issue his or her requisition on the treasury or establish a credit for the amount of an overpayment.

53 ~~(h)(g)~~ Either party may appeal an Intermediate Court of Appeals' decision to the Supreme
54 Court of Appeals as provided in §29A-6-1 *et seq.* of this code.

55 ~~(i)(h)~~ For all appeals regarding property tax assessments, taxability, and classifications
56 pursuant to §11-3-1 *et seq.*, the standard of proof which a taxpayer must meet at all levels of
57 review and appeal shall be a preponderance of the evidence standard.

NOTE: The purpose of this bill is to establish filing deadlines for appeals of property tax valuations and issues involving property tax classification and taxability to the West Virginia Office of Tax Appeals, to provide that appeals to the Office of Tax Appeals shall be heard *de novo*, to extend the hearing date for such matters, and to clarify that appeals from the Office of Tax Appeals shall be made to the Intermediate Court of Appeals and further appeals shall be made to the Supreme Court of Appeals.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.