WEST VIRGINIA CODE: §11-10-5B

§11-10-5b. Subpoena and subpoena duces tecum.

(a) Power to issue. -- For the efficient administration of the powers vested in the Tax Commissioner by the preceding section, and to facilitate determination or collection of any tax under this article, the Tax Commissioner, or his delegate, shall have the power to issue subpoenas and subpoenas duces tecum, in the name of the state Tax Department, and compel the attendance of witnesses and the production of books, papers, records, documents and testimony at the time and place specified. The Tax Commissioner, or his delegate, may exercise such power, in the name of the state Tax Department, upon request of any person who is a party in any hearing to be held under the provisions of this article, for the purposes of such hearing.

(b) Service. -- Every such subpoena and subpoena duces tecum shall be served at least five days before the return date thereof, by either personal service made by any person over eighteen years of age, or by registered or certified mail, but a return receipt signed by the person to whom subpoena or subpoena duces tecum is directed shall be required to prove service by registered or certified mail. Any party requesting a subpoena or subpoena duces tecum is responsible for service thereof and payment of any fee for such service. Service of other subpoenas and subpoenas duces tecum shall be the responsibility of the Tax Commissioner or his delegate. Any person, except a person in the employ of the state Tax Department, or any party, who serves any such subpoena or subpoena duces tecum shall be entitled to the same fee as sheriffs who serve witness subpoenas for the circuit courts of this state.

(c) Fees. -- Fees for the attendance of witnesses subpoenaed shall be the same as for witnesses before the circuit courts of this state. All such fees shall be paid by the Tax Commissioner if the subpoena or subpoena duces tecum was issued, without the request of an interested party, at the insistence of the state Tax Department. All such fees related to any subpoena or subpoena duces tecum issued at the request of a party to an administrative hearing shall be paid by the party who asked that such subpoena or subpoena duces tecum be issued. All requests by interested parties for issuance of subpoena or subpoena duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay such fees.

(d) Motion to quash. -- Upon motion made promptly, and in an event before the time specified in a subpoena or subpoena duces tecum for compliance therewith, the circuit court of the county in which the hearing is to be held or the circuit court of the county in which the person upon whom any such subpoena or subpoena duces tecum was served resides, has his or its principal place of business or is employed, or the circuit court of the county in which any such subpoena or subpoena duces tecum was served, or the judge of any such circuit court in vacation, may grant any relief with respect to any such subpoena or subpoena duces tecum which any such circuit court, under the "West Virginia Rules of Civil

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Procedure for Trial Courts of Record," could grant, and for any of the same reasons, with respect to any such subpoena or subpoena duces tecum issued from any such circuit court.

(e) Enforcement of compliance. -- In case of disobedience or neglect of any subpoena or subpoena duces tecum served on any person, or the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, the circuit court of the county in which the hearing is being held, or the circuit court of Kanawha County or of the county in which such person resides, has his or its principal place of business or is employed, or the judge thereof in vacation, upon application by the Tax Commissioner, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena or subpoena duces tecum issued from such circuit court for a refusal to testify therein.

(f) Testimony under oath. -- Witnesses subpoenaed under this section shall testify under oath or affirmation.

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