WEST VIRGINIA CODE: §11-10A-19

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

(a) Either the taxpayer or the commissioner, or both, or in the case of property taxes the county assessor, or county commission, may appeal the final decision or order of the Office of Tax Appeals by taking an appeal to the Intermediate Court of Appeals of this state within 30 days after entry of the final decision or order.

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

(c) The appeal proceeding shall be instituted by filing a notice of appeal with the Intermediate Court of Appeals, within the 30 day period prescribed in subsection (a) of this section.

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

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

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

(g) Either party may appeal an Intermediate Court of Appeals' decision to the Supreme

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Court of Appeals as provided in §29A-6-1 *et seq*. of this code.

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

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