

# 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 circuit courts of this state within 60 days after being served with notice 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)(1) If the taxpayer appeals, the appeal may be taken in the circuit court of Kanawha County or any county:

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

(B) In which the taxpayer resides;

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

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

(2) If the Tax Commissioner appeals, the appeal may be taken in Kanawha County: *Provided*, That the taxpayer shall have the right to remove the appeal to the county:

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

(B) Wherein the taxpayer resides;

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

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

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

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

(e) 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 petition for appeal is filed, or sooner if ordered by the circuit court, the petitioner shall file with the clerk of the circuit court 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 circuit court 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 circuit court for the certification. No bond may be required of the Tax Commissioner.

(f) The circuit court 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.

(g) 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.

(h) Either party may appeal to the Supreme Court of Appeals as provided in §29A-6-1 et seq. of this code.

(i) 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.