

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2581

BY DELEGATES GRAVES, CRISS, BARRETT, ANDERSON,
ROHRBACH, J. KELLY, MAYNARD, BURKHAMMER, J. PACK,

BRIDGES AND WESTFALL

[Passed April 10, 2021; in effect from passage.]

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2021 APR 28 P 4: 19

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1 AN ACT to repeal §11-3-24b and §11-3-25 of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §11-1C-10 of said code; and to amend and reenact §11-3-15c, §11-
3 3-15f, §11-3-15h, §11-3-15i, §11-3-23, §11-3-23a, §11-3-24, §11-3-24a, §11-3-25a, and
4 §11-3-32 of said code, and to amend and reenact §11-10A-1, §11-10A-7, §11-10A-8, §11-
5 10A-10, and §11-10A-19 of said code, all generally relating to the valuation, assessment,
6 review, and appellate rights of property owners regarding valuation, classification, and
7 taxability of real estate and personal property taxation; directing the Tax Commissioner to,
8 no later than July 1, 2021, propose emergency rules concerning the valuation of property
9 producing oil, natural gas, natural gas liquids, or any combination thereof; providing
10 methodology to determine fair market value and net proceeds; defining terms; providing
11 taxpayers the option to furnish a formal appraisal to establish the value of their real
12 property; providing that an assessor's review is to be an informal process and defining the
13 standard of proof which a taxpayer must meet to be no greater than a preponderance of
14 the evidence; expanding the jurisdiction of the Office of Tax Appeals to include property
15 tax valuation, classification, and taxability; providing that if an assessor rejects a petition,
16 the petitioner may appeal to the county Board of Equalization and Review or the Office of
17 Tax Appeals; allowing for certain appeals from decisions of the Tax Commissioner and
18 Board of Equalization and Review to the Office of Tax Appeals; repealing and eliminating
19 the Board of Assessment Appeals; providing for an increase in the number of
20 administrative law judges and staff attorneys within the Office of Tax Appeals; providing
21 for an effective date; and allowing appeal of decision of the Office of Tax Appeals to be
22 made in the county in which the real or personal property is assessed.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

**§11-1C-10. Valuation of industrial property and natural resources property by Tax
Commissioner; penalties; methods; values sent to assessors.**

1 (a) As used in this section:

2 (1) "Industrial property" means real and personal property integrated as a functioning unit
3 intended for the assembling, processing and manufacturing of finished or partially finished
4 products.

5 (2) "Natural resources property" means coal, oil, natural gas, limestone, fireclay, dolomite,
6 sandstone, shale, sand and gravel, salt, lead, zinc, manganese, iron ore, radioactive minerals, oil
7 shale, managed timberland as defined in section two of this article, and other minerals.

8 (b) All owners of industrial property and natural resources property each year shall make
9 a return to the State Tax Commissioner and, if requested in writing by the assessor of the county
10 where situated, to such county assessor at a time and in the form specified by the commissioner
11 of all industrial or natural resources property owned by them. The commissioner may require any
12 information to be filed which would be useful in valuing the property covered in the return. Any
13 penalties provided for in this chapter or elsewhere in this code relating to failure to list any property
14 or to file any return or report may be applied to any owner of property required to make a return
15 pursuant to this section.

16 (c) The State Tax Commissioner shall value all industrial property in the state at its fair
17 market value within three years of the approval date of the plan for industrial property required in
18 subsection (e) of this section. The commissioner shall thereafter maintain accurate values for all
19 such property. The Tax Commissioner shall forward each industrial property appraisal to the
20 county assessor of the county in which that property is located and the assessor shall multiply
21 each such appraisal by sixty percent and include the resulting assessed value in the land book or
22 the personal property book, as appropriate for each tax year. The commissioner shall supply
23 support data that the assessor might need to evaluate the appraisal.

24 (d) Within three years of the approval date of the plan required for natural resources
25 property required pursuant to subsection (e) of this section, the State Tax Commissioner shall
26 determine the fair market value of all natural resources property in the state and thereafter
27 maintain accurate values for all such property.

28 (1) In order to qualify for identification as managed timberland for property tax purposes
29 the owner must annually certify, in writing to the Division of Forestry, that the property meets the
30 definition of managed timberland as set forth in this article and contracts to manage property
31 according to a plan that will maintain the property as managed timberland. In addition, each
32 owner's certification must state that forest management practices will be conducted in accordance
33 with approved practices from the publication "Best Management Practices for Forestry". Property
34 certified as managed timberland shall be valued according to its use and productive potential.
35 The Tax Commissioner shall promulgate rules for certification as managed timberland.

36 (2) In the case of all other natural resources property, the commissioner shall develop an
37 inventory on a county by county basis of all such property and may use any resources, including,
38 but not limited to, geological survey information; exploratory, drilling, mining and other information
39 supplied by natural resources property owners; and maps and other information on file with the
40 state Division of Environmental Protection and office of miners' health, safety and training. Any
41 information supplied by natural resources owners or any proprietary or otherwise privileged
42 information supplied by the state Division of Environmental Protection and office of miner's health,
43 safety and training shall be kept confidential unless needed to defend an appraisal challenged by
44 a natural resources owner. Formulas for natural resources valuation may contain differing
45 variables based upon known geological or other common factors. The Tax Commissioner shall
46 forward each natural resources property appraisal to the county assessor of the county in which
47 that property is located and the assessor shall multiply each such appraisal by sixty percent and
48 include the resulting assessed value in the land book or the personal property book, as
49 appropriate, for each tax year. The commissioner shall supply support data that the assessor
50 might need to explain or defend the appraisal. The commissioner shall directly defend any
51 challenged appraisal when the assessed value of the property in question exceeds \$2 million or
52 an owner challenging an appraisal holds or controls property situated in the same county with an
53 assessed value exceeding \$2 million. At least every five years, the commissioner shall review

54 current technology for the recovery of natural resources property to determine if valuation
55 methodologies need to be adjusted to reflect changes in value which result from development of
56 new recovery technologies.

57 (3) The Tax Commissioner shall, no later than July 1, 2021, propose emergency rules in
58 accordance with §29A-3-15 of this code regarding valuation of property producing oil, natural gas,
59 natural gas liquids, or any combination thereof. For purposes of the emergency rules required by
60 this subdivision regarding valuation of property producing oil, natural gas, natural gas liquids, or
61 any combination thereof, fair market value shall be determined through the process of applying a
62 yield capitalization model to the net proceeds. Net proceeds shall mean actual gross receipts on
63 a sales volume basis determined from the actual price received by the taxpayers as reported on
64 the taxpayer's returns, less royalties, and less actual annual operating costs as reported on the
65 taxpayer's returns. For the purposes of this subdivision:

66 (A) "Natural gas liquids" means propane, ethane, butanes, and pentanes (also referred to
67 as condensate), or a combination of them that are subject to recovery from raw gas liquids by
68 processing in field separators, scrubbers, gas processing and reprocessing plants, or cycling
69 plants.

70 (B) "Actual annual operating costs" shall only include lease operating expenses, lifting
71 costs, gathering, compression, processing, separation, fractionation, and transportation charges.

72 (e) The Tax Commissioner shall develop a plan for the valuation of industrial property and
73 a plan for the valuation of natural resources property. The plans shall include expected costs and
74 reimbursements, and shall be submitted to the property valuation training and procedures
75 commission on or before January 1, 1991, for its approval on or before July 1, of such year. Such
76 plan shall be revised, resubmitted to the commission and approved every three years thereafter.

77 (f) To perform the valuation duties under this section, the State Tax Commissioner has the
78 authority to contract with a competent property appraisal firm or firms to assist with or to conduct
79 the valuation process as to any discernible species of property statewide if the contract and the

80 entity performing such contract is specifically included in a plan required by subsection (e) of this
81 section or otherwise approved by the commission. If the Tax Commissioner desires to contract
82 for valuation services only in one county or a group of counties, the contract must be approved
83 by the commission.

84 (g) The county assessor may accept the appraisal provided, pursuant to this section, by
85 the State Tax Commissioner: *Provided*, That if the county assessor fails to accept the appraisal
86 provided by the State Tax Commissioner, the county assessor shall show just cause to the
87 valuation commission for the failure to accept such appraisal and shall further provide to the
88 valuation commission a plan by which a different appraisal will be conducted.

89 (h) The costs of appraising the industrial and natural resources property within each
90 county, and any costs of defending same shall be paid by the state: *Provided*, That the office of
91 the state Attorney General shall provide legal representation on behalf of the Tax Commissioner
92 or assessor, at no cost, in the event the industrial and natural resources appraisal is challenged
93 in court.

94 (i) For purposes of revaluing managed timberland as defined in section two of this article,
95 any increase or decrease in valuation by the commissioner does not become effective prior to
96 July 1, 1991. The property owner may request a hearing by the director of the Division of Forestry,
97 who may thereafter rescind the disqualification or allow the property owner a reasonable period
98 of time in which to qualify the property. A property owner may appeal a disqualification to the
99 circuit court of the county in which the property is located.

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-15c. Petition for assessor review of improper valuation of real property.

1 (a) A taxpayer who is of the opinion that his or her real property has been valued too high
2 or otherwise improperly valued or listed in the notice given as provided in §11-3-2a of this code
3 may, but is not required to, file a petition for review with the assessor on a written form prescribed

4 by the Tax Commissioner. This section shall not apply to industrial and natural resource property
5 appraised by the Tax Commissioner.

6 (b) The petition shall state the taxpayer's opinion of the true and actual value of the
7 property and substantial information that justifies that opinion of value for the assessor to consider
8 for purposes of basing a change in classification or correction of the valuation. For purposes of
9 this subsection, the taxpayer shall provide substantial information to justify the opinion of value.
10 The taxpayer may provide an appraisal of the property from a licensed real estate appraiser
11 stating its true and actual value for its current use.

12 (c) The petition may include more than one parcel of property if they are part of the same
13 economic unit according to the Tax Commissioner's guidelines or if they are owned by the same
14 owner, have the same use, are appealed on the same basis, and are located in the same tax
15 district or in contiguous tax districts of the county, and are in a form prescribed by the Tax
16 Commissioner.

17 (d) The petition shall be filed within eight business days after the date the taxpayer
18 receives the notice of increased assessment under §11-3-2a of this code or the notice of
19 increased value was published as a Class II-0 legal advertisement as provided in that section.
20 For purposes of this section, 'business day' means any day other than Saturday, Sunday, or any
21 legal holiday set forth in section one, article two, chapter two of this code.

§11-3-15f. Rejection of petition; amended petition; appeal options.

1 If the assessor rejects a petition filed pursuant to §11-3-15c, §11-3-15d, or §11-3-15e of
2 this code, the petitioner may appeal to the county Board of Equalization and Review as provided
3 in §11-3-24 of this code or the Office of Tax Appeals.

§11-3-15h. Ruling on petition.

1 (a) In all cases the assessor shall consider the petition and shall rule on each petition filed
2 pursuant to §11-3-15c, §11-3-15d, or §11-3-15e of this code by February 10 of the assessment
3 year. Written notice shall be served by regular mail on the person who filed the petition.

4 (b) In considering a petition filed pursuant to §11-3-15c, §11-3-15d, or §11-3-15e of this
5 code, the assessor shall consider the valuation fixed by the assessor on other similar property
6 that is similarly situated.

7 (c) The consideration of a petition for review with the assessor is to be an informal process.
8 Formal rules of evidence shall not be required; the assessor may consider all evidence presented
9 and may give each item the weight, in his or her opinion, it commands.

10 (d) The standard of proof which a taxpayer must meet to defend his or her opinion of the
11 true and actual value of the subject property during reviews by the assessor shall be no greater
12 than a simple preponderance of the evidence standard.

§11-3-15i. Petitioner's right to appeal.

1 (a) If the assessor grants the requested relief, the petitioner may not appeal the ruling of
2 the assessor.

3 (b) If the petitioner and the assessor reach an agreement within five business days after
4 the conclusion of the meeting held as provided in §11-3-15g of this code, both parties shall sign
5 the agreement and both parties waive the right to further appeal.

6 (c) If all or part of the petitioner's request under §11-3-15c, §11-3-15d, or §11-3-15e of this
7 code is denied, the assessor shall mail, on the date of the ruling, to the petitioner at the address
8 shown on the petition notice of the grounds of the refusal to make the change or changes
9 requested in the petition. A petitioner whose request is denied, in whole or in part, or a petitioner
10 who does not receive a response from the assessor by February 10, as provided in §11-3-15h of
11 this code, may file a protest with the county commission sitting as a board of equalization and
12 review, as provided in §11-3-24 of this code, or the Office of Tax Appeals.

§11-3-23. Alterations in property books.

1 After the copies of the landbook or personal property book have been verified and
2 delivered, no alteration shall be made in them, or either of them, affecting the taxes of that year,
3 except on the final order of a successful review or appeal from the assessment.

§11-3-23a. Informal review and resolution of classification, taxability and valuation issues.

1 (a) *General.* - Anytime after real or tangible personal property is returned for taxation, the
2 taxpayer may apply to the assessor of the county in which the property was situated on the
3 assessment date for information about the classification, taxability, or valuation of the property for
4 property tax purposes for the tax year following the July 1 assessment date. A taxpayer who is
5 not satisfied with the response of the assessor and wants to further pursue the matter shall follow
6 the procedures set forth in this section.

7 (b) *Classification or taxability.* - A taxpayer who wants to contest the classification or
8 taxability of property must follow the procedures set forth in §11-3-24a of this code.

9 (c) *Valuation issues - property appraised and assessed by county assessor.* —

10 (1) A taxpayer who is dissatisfied with the response of the assessor on a question of
11 valuation and who receives a notice of increase in the assessed value of real property as provided
12 in §11-3-2a of this code, or a notice of increase in the assessed value of business personal
13 property as provided in §11-3-15b of this code, who disagrees with the assessed value stated in
14 the notice, may use the informal review process specified in this article if the taxpayer decides to
15 challenge the assessed value.

16 (2) A taxpayer may apply for relief to the county commission sitting as a Board of
17 Equalization and Review pursuant to §11-3-24 of this code, or to the Office of Tax Appeals not
18 later than February 20 of the tax year by filing a written protest with the clerk of the county
19 commission or the Office of Tax Appeals that identifies the amount of the assessed value the
20 taxpayer believes to be in controversy and states generally the taxpayer's reason or reasons for
21 filing the protest. The board or the Office of Tax Appeals shall then set a date and time to hear
22 the taxpayer's protest. The taxpayer shall timely pay first and second half installment payments
23 of taxes levied for the current tax year on or before they become due and that any reduction in
24 assessed value that is administratively or judicially determined in a decision that becomes final
25 will result in a credit being established against taxes that become due for a tax year subsequent

26 to the tax year in which the decision becomes final, except as otherwise stated in the decision or
27 as otherwise provided in this article. In the event the Board of Equalization and Review adjourns
28 sine die before February 20 of the tax year, a taxpayer may file its written protest and the
29 acknowledgment described in this subdivision with the Office of Tax Appeals. If a taxpayer fails
30 to provide its written protest on or before February 20, and the Board of Equalization and Review
31 unilaterally increases the assessed value subsequent to that date, the taxpayer may file a written
32 protest and the acknowledgment described in this subdivision with the Office of Tax Appeals.

33 (d) *Valuation issues - property appraised by Tax Commissioner and assessed by county*
34 *assessor. -*

35 (1) A taxpayer who receives a notice of tentative appraised value of natural resource
36 property or industrial property from the Tax Commissioner pursuant to §11-6K-1 *et seq.* of this
37 code.

38 (2) A taxpayer may apply for relief to the county commission sitting as a board of
39 equalization and review pursuant to §11-3-24 of this code or to the Office of Tax Appeals no later
40 than February 20 of the tax year by filing a written protest with the clerk of the county commission
41 or to the Office of Tax Appeals that identifies the amount of the assessed value the taxpayer
42 believes to be in controversy and states generally the taxpayer's reason or reasons for filing the
43 protest. The board or the Office of Tax Appeals shall then set a date and time to hear the
44 taxpayer's protest. The taxpayer shall timely pay first and second half installment payments of
45 taxes levied for the current tax year on or before they become due and that any reduction in
46 assessed value that is administratively or judicially determined in a decision that becomes final
47 will result in a credit being established against taxes that become due for a tax year subsequent
48 to the tax year in which the decision becomes final, except as otherwise stated in the decision or
49 as otherwise provided in this article. In the event the Board of Equalization and Review adjourns
50 sine die before February 20 of the tax year, a taxpayer may file its written protest and the
51 acknowledgment described in this subdivision with the Office of Tax Appeals. If a taxpayer fails

52 to provide its written protest on or before February 20, and the Board of Equalization and Review
53 unilaterally increases the assessed value subsequent to that date, the taxpayer may file a written
54 protest and the acknowledgment described in this subdivision with the Office of Tax Appeals.

55 (e) The standard of proof which a taxpayer must meet at all levels of review and appeal
56 under this section shall be a preponderance of the evidence standard.

§11-3-24. Review and equalization by county commission.

1 (a) The county commission shall annually, not later than February 1 of the tax year, meet
2 as a board of equalization and review for the purpose of reviewing and equalizing the assessment
3 made by the assessor. The board shall not adjourn for longer than three business days at a time,
4 not including a Saturday, Sunday or legal holiday in this state, until this work is completed. The
5 board may adjourn sine die anytime after February 15 of the tax year and shall adjourn sine die
6 not later than the last day of February of the tax year.

7 (b) At the first meeting of the board, the assessor shall submit the property books for the
8 current year, which shall be complete, except that the levies shall not be extended. The assessor
9 and the assessor's assistants shall attend and render every assistance possible in connection
10 with the value of property assessed by them.

11 (c) The board shall proceed to examine and review the property books, and shall add on
12 the books the names of persons, the value of personal property and the description and value of
13 real estate liable to assessment which was omitted by the assessor. The board shall correct all
14 errors in the names of persons, in the description and valuation of property, and shall cause to be
15 done whatever else is necessary to make the assessed valuations comply with the provisions of
16 this chapter. But in no case shall any question of classification or taxability be considered or
17 reviewed by the board.

18 (d) If the board determines that any property or interest is assessed at more or less than
19 60 percent of its true and actual value as determined under this chapter, it shall fix it at 60 percent
20 of its true and actual value: *Provided*, That no assessment shall be increased without giving the

21 taxpayer at least five days' notice, in writing, of the intention to make the increase and no
22 assessment shall be greater than 60 percent of the true and actual value of the property.

23 (e) Service of notice of the increase upon the taxpayer shall be sufficient, or upon his or
24 her agent or attorney, if served in person, or if sent by registered or certified mail to the property
25 owner, his or her agent, or attorney, at the last known mailing address of the person as shown in
26 the records of the assessor or the tax records of the county sheriff. If such person cannot be found
27 and has no last known mailing address, then notice shall be given by publication thereof as a
28 Class I legal advertisement in compliance with the provisions of §59-3-1, *et seq.* of this code and
29 the publication area shall be the county. The date of the publication shall be at least five days, not
30 including a Saturday, Sunday or legal holiday in this state, prior to the day the board acts on the
31 increase. When the board intends to increase the entire valuation in any one tax district by a
32 general increase, notice shall be given by publication thereof as a Class II-0 legal advertisement
33 in compliance with the provisions of §59-3-1, *et seq.* of this code and the publication area shall
34 be the county. The date of the last publication shall be at least five days, not including a Saturday,
35 Sunday or legal holiday in this state, prior to the meeting at which the increase in valuation is
36 acted on by the board. When an increase is made, the same valuation shall not again be changed
37 unless notice is again given as provided.

38 The clerk of the county commission shall publish notice of the time, place, and general
39 purpose of the meeting as a Class II legal advertisement in compliance with the provisions of §59-
40 3-1, *et seq.* of this code and the publication area shall be the county. The expense of publication
41 shall be paid out of the county treasury.

42 (f) Any person who receives notice as provided in subsection (e) of this section may
43 appear before the board at the time and place specified in the notice to object to the proposed
44 increase in the valuation of taxpayer's property. After hearing the board's reason or reasons for
45 the proposed increase, the taxpayer may present his or her objection or objections to the increase
46 and the reason or reasons for the objections.

47 (g) The board may approve an agreement signed by the taxpayer or taxpayer's
48 representative and the assessor, and by a representative of the Tax Commissioner when the
49 property is industrial property or natural resources property, that resolves a valuation matter while
50 the land and personal property books are before the Board for Equalization and Review.

51 (h) If any person fails to apply for relief at this meeting, he or she shall have waived the
52 right to ask for correction in the assessment list for the current year, and shall not thereafter be
53 permitted to question the correctness of the list as finally fixed by the board, except on appeal to
54 the Office of Tax Appeals, or as otherwise provided in this article.

55 (i) After the board completes the review and equalization of the property books, a majority
56 of the board shall sign a statement that it is the completed assessment of the county for the tax
57 year. Then the property books shall be delivered to the assessor and the levies extended as
58 provided by law.

59 (j) A taxpayer who elects to have a hearing before the Board of Equalization and Review
60 may appeal the board's order to the Office of Tax Appeals.

61 (k) The standard of proof which a taxpayer must meet at all levels of review and appeal
62 under this section shall be a preponderance of the evidence standard.

**§11-3-24a. Protest of classification or taxability to assessor; appeal to Tax Commissioner,
appeal to Office of Tax Appeals.**

1 (a) At any time after property is returned for taxation, and up to and including the time the
2 property books are before the county commission sitting as a board of equalization and review,
3 any taxpayer may apply to the assessor for information regarding the classification and taxability
4 of the taxpayer's property. In case the taxpayer is dissatisfied with the classification of property
5 assessed to the taxpayer or believes that the property is exempt or otherwise not subject to
6 taxation, the taxpayer shall file objections in writing with the assessor. The assessor shall decide
7 the question by either sustaining the protest and making proper corrections, or by stating, in
8 writing if requested, the reasons for refusal to grant the protest.

9 (b) The assessor may, and if the taxpayer requests, the assessor shall, certify the question
10 to the State Tax Commissioner in a statement sworn to by both parties, or if the parties are unable
11 to agree, in separate sworn statements, giving a full description of the property and any other
12 information which the Tax Commissioner requires. The Tax Commissioner shall prescribe forms
13 on which the question shall be certified and the Tax Commissioner may pursue any inquiry and
14 procure any information necessary for the disposition of the issue.

15 (c) The Tax Commissioner shall, as soon as possible on receipt of the question, but in no
16 case later than February 28 of the assessment year, instruct the assessor as to how the property
17 shall be treated. The instructions issued and forwarded by mail to the assessor shall be binding
18 upon the assessor, but either the assessor or the taxpayer may apply to the Office of Tax Appeals
19 within 30 days after receiving written notice of the Tax Commissioner's ruling for review of the
20 question of classification or taxability.

21 (d) The amendments to this section enacted in the year 2010 apply to classification and
22 taxability rulings issued for taxes levied after December 31, 2011.

23 (e) The standard of proof which a taxpayer must meet at all levels of review and appeal
24 under this section shall be a preponderance of the evidence standard.

§11-3-24b. Board of Assessment Appeals.

1 [Repealed.]

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

1 [Repealed.]

§11-3-25a. Payment of taxes that become due while appeal is pending.

1 (a) All taxes levied and assessed against the property for the year on which a protest or
2 an appeal has been filed by the taxpayer as provided in §11-3-24 or §11-3-24a of this code shall
3 be paid before they become delinquent. If the taxes are not paid before becoming delinquent, the
4 governing body having jurisdiction of the appeal, as appropriate, shall dismiss the appeal unless

5 the delinquent taxes and interest due are paid in full within 30 days after taxes for the second half
6 of the tax year become delinquent.

7 (b) In the event the order of a court or other governing body becomes final and the order
8 results in an overpayment of taxes levied for the tax year that have been paid to the sheriff, the
9 amount of the overpayment shall be refunded to the taxpayer if the overpayment is \$25,000 or
10 less within 30 days after the time for appealing the decision or order expires or, if the decision or
11 order is appealed, within 30 days of the date the appeals court or other governing body turns
12 down the appeal. If the overpayment is more than \$25,000, a credit in the amount of the
13 overpayment shall be established by the county sheriff and allowed as a credit against taxes owed
14 up to the following two tax years: *Provided*, That the county commission may elect to refund the
15 amount of overpayment rather than having a credit established as provided in this section:
16 *Provided, however*, if any portion of the overpayment remains unused after the date on which
17 taxes payable for the second half of the second tax year following the tax year of the overpayment
18 become delinquent, that portion shall be refunded to the taxpayer by the county sheriff no later
19 than 30 days after that date, or 30 days from the date that the order becomes final, whichever
20 date occurs later. Whenever an overpayment is refunded or credited under this section, the county
21 shall pay interest at the rate established in §11-10-17 and §11-10-17a of this code for
22 overpayments of taxes collected by the Tax Commissioner, which interest shall be computed from
23 the date the overpayment was received by the sheriff to the date of the refund check or the date
24 the credit is actually taken against taxes that become due after the order of the court becomes
25 final.

§11-3-32. Effective date of amendments.

1 (a) Unless specified otherwise in this article, all amendments to this article adopted in the
2 year 2010 apply to the assessment years beginning on or after July 1, 2011.

3 (b) Unless specified otherwise in this article, all amendments to this article adopted in the
4 year 2021 apply to the assessment years beginning on or after July 1, 2022.

ARTICLE 10A. WEST VIRGINIA OFFICE OF TAX APPEALS.

§11-10A-1. Legislative finding; purpose.

1 The Legislature finds that there is a need for an independent quasi-judicial agency
2 separate and apart from the Tax Division to resolve disputes between the Tax Commissioner,
3 county assessors, county commissions, and taxpayers to maintain public confidence in the state
4 tax system. The Legislature does therefore declare that the purpose of this article is to create the
5 West Virginia office of tax appeals to resolve disputes between the Tax Commissioner, county
6 assessors, county commissions, and taxpayers and to prescribe the powers and duties of the
7 office of tax appeals.

**§11-10A-7. Powers and duties of Chief Administrative Law Judge; all employees, except
Chief Administrative Law Judge, members of classified service; qualifications of
administrative law judges.**

1 (a) The Chief Administrative Law Judge is the chief executive officer of the Office of Tax
2 Appeals and he or she may employ one person to serve as executive director, two staff attorneys,
3 and other clerical personnel as necessary for the proper administration of this article. The Chief
4 Administrative Law Judge may delegate administrative duties to other employees, but the Chief
5 Administrative Law Judge is responsible for all official delegated acts.

6 (1) Upon the request of the Chief Administrative Law Judge, the Governor may appoint up
7 to three administrative law judges as necessary for the proper administration of this article.

8 (2) All employees of the Office of Tax Appeals, except the Chief Administrative Law Judge,
9 shall be in the classified service and shall be governed by the provisions of the statutes, rules,
10 and policies of the classified service in accordance with the provisions of §29-6-1 *et seq.* of this
11 code.

12 (3) Prior to employment by the Office of Tax Appeals, all administrative law judges shall
13 be admitted to the practice of law in this state and have at least two years of full-time or equivalent
14 part-time experience as an attorney with federal or state tax law expertise.

15 (4) The Chief Administrative Law Judge and all administrative law judges shall be
16 members of the Public Employees Retirement System and do not qualify as participants in the
17 judicial retirement system during their tenure with the Office of Tax Appeals.

18 (b) The Chief Administrative Law Judge shall:

19 (1) Direct and supervise the work of the legal staff;

20 (2) Make hearing assignments;

21 (3) Maintain the records of the Office of Tax Appeals;

22 (4) Review and approve decisions of administrative law judges as to legal accuracy, clarity
23 and other requirements;

24 (5) Publish decisions in accordance with the provisions of §11-10A-16 of this code;

25 (6) Submit to the Legislature, on or before February 15, an annual report summarizing the
26 Office of Tax Appeals' activities since the end of the last report period, including a statement of
27 the number and type of matters handled by the Office of Tax Appeals during the preceding fiscal
28 year and the number of matters pending at the end of the year; and

29 (7) Perform the other duties necessary and proper to carry out the purposes of this article.

§11-10A-8. Jurisdiction of Office of Tax Appeals.

1 The Office of Tax Appeals has exclusive and original jurisdiction to hear and determine
2 all:

3 (1) Appeals from tax assessments issued by the Tax Commissioner pursuant to article ten
4 of this chapter;

5 (2) Appeals from decisions or orders of the Tax Commissioner denying refunds or credits
6 for all taxes administered in accordance with the provisions of §11-10-1 *et seq.* of this code;

7 (3) Appeals from orders of the Tax Commissioner denying, suspending, revoking, refusing
8 to renew any license, or imposing any civil money penalty for violating the provisions of any
9 licensing law administered by the Tax Commissioner;

10 (4) Questions presented when a hearing is requested pursuant to the provisions of any
11 article of this chapter which is administered by the provisions of §11-10-1 *et seq.* of this code;

12 (5) Matters which the Tax Division is required by statute or legislatively approved rules to
13 hear, except employee grievances filed pursuant to §6C-2-1 *et seq.* of this code;

14 (6) Other matters which may be conferred on the office of tax appeals by statute or
15 legislatively approved rules; and

16 (7) Appeals by any party aggrieved by the valuation of real property and personal property
17 tax assessments and classifications or taxability as set forth in §11-3-1 *et. seq.* of this code.

§11-10A-10. Hearing procedures.

1 (a) The office of tax appeals shall assign a date, time, and place for a hearing on a petition
2 and shall notify the parties to the hearing by written notice at least 20 days in advance of the
3 hearing date. The hearing shall be held within 45 days of the due date of the commissioner's
4 answer unless continued by order of the office of tax appeals for good cause.

5 (b) A hearing before the office of tax appeals shall be heard *de novo* and conducted
6 pursuant to the provisions of the contested case procedure set forth in §29A-5-1 *et seq.* of this
7 code to the extent not inconsistent with the provisions of this article. In case of conflict, the
8 provisions of this article shall govern. The provisions of §29A-5-5 of this code are not applicable
9 to a hearing before the office of tax appeals.

10 (c) The office of tax appeals is not bound by the rules of evidence as applied in civil cases
11 in the circuit courts of this state. The office of tax appeals may admit and give probative effect to
12 evidence of a type commonly relied upon by a reasonably prudent person in the conduct of his or
13 her affairs.

14 (d) All testimony shall be given under oath.

15 (e) Except as otherwise provided by this code or legislative rules, the taxpayer or petitioner
16 has the burden of proof.

17 (f) The administrative law judge may ask for proposed findings of fact and conclusions of
18 law from the parties prior to the issuance by the office of tax appeals of the decision in the matter.

19 (g) Hearings shall be exempt from the requirements of §6-9A-1 *et seq.* and §29B-1-1 *et*
20 *seq.* of this code.

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

§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 by taking an appeal to the circuit courts of this state within 60 days after being served
4 with notice of the final decision or order.

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

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

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

10 (B) In which the taxpayer resides;

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

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

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

14 *Provided*, That the taxpayer shall have the right to remove the appeal to the county:

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

16 (B) Wherein the taxpayer resides;

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

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

19 (3) In the event parties appeal to different circuit courts, the appeals shall be consolidated.

20 In the absence of agreement by the parties, the appeal shall be consolidated in the circuit court
21 of the county in which the taxpayer filed the petition for appeal.

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

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

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

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

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

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

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

Deane Jupp
.....
Chairman, House Committee

Mark Hayward
.....
Chairman, Senate Committee

Originating in the House.

In effect from passage.

Steve Harris
.....
Clerk of the House of Delegates

Joe Arrin
.....
Clerk of the Senate

Don Haskin
.....
Speaker of the House of Delegates

C.P. Br...
.....
President of the Senate

FILED
2021 APR 28 P 4: 19
OFFICE WEST VIRGINIA
SECRETARY OF STATE

The within *is approved* this the *28th*
day of *April* 2021.

James Owens
.....
Governor

PRESENTED TO THE GOVERNOR

APR 22 2021

Time 2:53 pm