



# West Virginia Tax Appeal Changes

Craig Griffith

Frost Brown Todd LLC

West Virginia Tax Institute

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# Recent Appeals Legislation

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- Property Tax Appeal Legislation
  - Significantly alters the property tax appeal process beginning in 2023
  - Office of Tax Appeals (“OTA”) option
  - Continued February Board of Equalization and Review (“BOE”) option
  - Elimination of October Board of Assessment Appeals hearings
- OTA will become the forum for most business appeals
  - Due Process - matters no longer determined by County Commissioners
  - Legal analysis by independent Administrative Law Judges
  - Consolidation of multicounty appeals in OTA
- Intermediate Court of Appeals Legislation
  - All appeals from OTA must be filed with the Intermediate Court of Appeals, not Circuit Court
  - Includes appeals of OTA property tax decisions

# Property Tax – Valuation, Classification, Taxability

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- Valuation review
  - Assessor – residential and commercial
  - Tax Commissioner – industrial and natural resource (excludes oil, natural gas and managed timberland)
  - Effective TY23, valuation issues may be appealed to either BOE or OTA
- Classification and taxability review
  - Application first filed with county assessor
  - Taxpayer may request that question be certified to Tax Commissioner
  - Effective TY23, classification and taxability appeals must be filed with OTA

# Lower Courts and Supreme Court – Property Tax

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- Circuit Court, currently
  - Valuation appeals from BOE and BAA
  - Taxability and classification determinations by Tax Commissioner
- Intermediate Court, beginning with tax year 2023
  - All property tax disputes must flow through OTA
  - Appeal from OTA must be filed with Intermediate Court of Appeals
  - Circuit court appeal statute repealed July 1, 2022. W. Va. Code § 11-3-25
  - For TY22 BAA appeals heard October 2022, must still file appeal with Circuit Court. BAA not a “state agency”
- Supreme Court
  - All Intermediate Court property tax cases may be appealed to the Supreme Court

# Office of Tax Appeals – Property Tax

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- 2002 to present – not authorized to hear property tax appeals
- 2023 forward – almost all property tax appeals will go through OTA
- Valuation issues
  - May file appeal of Assessor's or Tax Commissioner's ruling with BOE or OTA
  - Appeal of BOE decision must be filed with OTA
- Classification and taxability issues
  - Appeal of Tax Commissioner's decision must be initiated with OTA
- File Intermediate Court appeal within 30 days of receipt of OTA decision
  - 60 days under OTA article. W. Va. Code § 11-10A-19(a)
  - But 30 days under Intermediate Court APA statute. W. Va. Code § 29A-5-4

# Burden of Proof – Property Tax Matters

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- Common law established a “clear and convincing evidence” standard
- Appraisal by Assessors or Tax Commissioner presumed correct
- New standard is “preponderance of the evidence”
  - “Proof by a preponderance of the evidence requires only that a party satisfy the court or jury by sufficient evidence that the existence of a fact is more probable or likely than its nonexistence.” *Jackson v. State Farm Mut. Auto Inc., Co.*
  - Valuation, classification or taxability questions
  - Applies regardless of whether matter is heard by Assessor, Tax Commissioner, Board of Equalization and Review, Office of Tax Appeals, Intermediate Court, or Supreme Court
- No presumption of correctness of the appraisal

# Intermediate Court of Appeals

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- For appeals of “contested case” decisions issued after June 30, 2022, must file appeal with the Intermediate Court of Appeals. W. Va. Code § 29A-5-4 of State Administrative Procedures Act
  - **“Notwithstanding any provision of this code to the contrary. . .”**
- Intermediate Court has appellate jurisdiction over “[f]inal judgments, orders, or decisions of an agency or administrative law judge entered after June 30, 2022, heretofore appealable to the Circuit Court of Kanawha County. . .” W. Va. Code § 51-11-4(b)(4)
- Appeal must be filed within 30 days after the date the party received notice of the final order or decision of the agency. W. Va. Code § 29A-5-4(a)

# Intermediate Court of Appeals

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- State APA states that the provisions of the contested case article do not apply to “the state tax commissioner.” W. Va. Code § 29A-5-5.
  - Last updated in 1991, when tax appeals were heard by the Office of Hearings and Appeals. Not updated following creation of OTA
- Office of Tax Appeals Article requires that appeals from OTA be filed with a circuit court (Kanawha or others) within 60 days of the OTA decision. W. Va. Code § 11-10A-19
- However, the broad language of the APA Intermediate Court of Appeals provisions and the new West Virginia Appellate Reorganization Act supersedes any code language that establishes a longer deadline



# Intermediate Court of Appeals

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- Subject to the administrative control, supervision and oversight of the Supreme Court of Appeals. W. Va. Code § 51-11-7(a)
- Notices of appeals, petitions, documents and records are filed in accordance with rules of the Supreme Court and appeals are filed with the Supreme Court clerk
- Notices of Appeal filed using Appendix A to the Rule of Appellate Procedure (same form used for Intermediate or Supreme Court)
- Supreme Court has discretion to grant or deny a petition for appeal filed after a final order or judgment is entered by the Intermediate Court of Appeals. W. Va. Code § 51-11-10

thank  
you



**Craig Griffith**

[cgriffith@fbtlaw.com](mailto:cgriffith@fbtlaw.com)

304-348-2407 (office)

304-376-6526 (cell)

 **Frost  
Brown Todd**<sup>LLC</sup>  
ATTORNEYS