



West Virginia Property Tax Appeals: A New Hope

Craig Griffith
Frost Brown Todd LLC
West Virginia Tax Institute
October 19, 2021

Recent Legislation

- House bill 2581 from 2021 regular session
 - Amended appraisal methodology for oil and gas beginning in 2022
 - Use of third-party appraisals in informal review process with assessors
 - Applies to residential and commercial property appraised by assessors
 - Significantly alters the property tax appeal process beginning in 2023
 - Office of Tax Appeals (“OTA”) option
 - Elimination of October County Commission hearings
 - Reduces burden of proof on taxpayers in property tax appeals

Informal Review Process

- Valuation review
 - Assessor – residential and commercial
 - Tax Commissioner – industrial and natural resource (excludes oil, natural gas and managed timberland)
 - No appeal allowed if agreement is reached
 - Appeals filed with County Commission where property is located
- Classification and taxability review
 - Application first filed with county assessor
 - Taxpayer may request that question be certified to Tax Commissioner
 - Under current law, appeal of Tax Commissioner's ruling filed in circuit court
- Procedural changes under HB2581
 - Valuation issues may be appealed to either County Commission or OTA
 - Classification and taxability appeals must be filed with OTA

County Commission Appeals

- Current
 - Board of Equalization and Review (“BOE”) – hearings in February
 - Before property tax books are closed
 - Board of Assessment Appeals (“BAA”) – hearings in October
 - After property tax books are closed
- New, beginning with tax year 2023
 - BOE - retained
 - BAA – eliminated
 - Option to bypass BOE and file appeal with OTA
 - Must agree to timely pay first and second half installments for all appeals

Circuit Court and Supreme Court

- Circuit Court, currently
 - Valuation appeals from BOE and BAA
 - Taxability and classification determinations by Tax Commissioner
 - Transcript of BOE/BAA hearing must be filed with Circuit Court within 30 days of filing of petition for appeal
- Circuit Court, beginning with tax year 2023
 - All property tax disputes must first flow through OTA
 - Eliminates any need for discovery for classification and taxability matters
 - Appeal may be filed in Kanawha County, taxpayer's county, or county where property is located
- Supreme Court
 - All Circuit Court property tax cases may be appealed to the Supreme Court
 - Removes valuation case requirement that the property had to be assessed at \$50,000+

Office of Tax Appeals

- 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
- Must file Circuit Court appeal within 60 days of receipt of OTA decision
 - OTA submits the case record to the Circuit Court

Office of Tax Appeals

- Unanswered questions
 - Appeals from BOE
 - New hearing or does OTA rule based on record developed at BOE?
 - Appeal required to be filed within 30 days of adjournment of BOE as is currently required for Circuit Court Appeals?
 - Certification of record requirements?
 - Appeals directly to OTA
 - Number of days from receipt of final value to file appeal?
 - February 20th deadline likely paramount for valuation appeals
 - For classification and taxability matters, appeal must be filed within 30 days of receipt of Tax Commissioner's ruling

Burden of Proof

- 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, Circuit Court, or Supreme Court
- No presumption of correctness of the appraisal

Parting Thoughts

- BOE appeals will be rare; OTA will become the forum
 - Due Process
 - Matters no longer determined by County Commissioners
 - Legal analysis by independent Administrative Law Judges
 - Consolidation of multicounty appeals in OTA
- OTA needs a budget enhancement
 - All taxability and classification appeals
 - All valuation appeals from BOE
 - HB2581 authorizes two staff attorneys, four ALJs
 - OTA has never used a staff attorney and has only had two ALJs for last several years
 - Office space issues

thank
you



Craig Griffith

cgriffith@fbtlaw.com

304-348-2407 (office)

304-376-6526 (cell)

 **Frost
Brown Todd**^{LLC}
ATTORNEYS