

**SUPREME COURT OF APPEALS  
STATE OF WEST VIRGINIA**

GARY L. JOHNSON  
ADMINISTRATIVE DIRECTOR



ADMINISTRATIVE OFFICE  
BUILDING 1, ROOM E-100  
1900 KANAWHA BOULEVARD, E.  
CHARLESTON, WV 25305-0832  
(VOICE) 304/558-0145  
(FAX) 304/558-1212  
[www.courtswv.gov](http://www.courtswv.gov)

April 27, 2018

VIA ELECTRONIC MAIL

Brad McElhinny  
West Virginia MetroNews  
1111 Virginia St. E.  
Charleston, WV 25311  
[Brad.McElhinny@wvradio.com](mailto:Brad.McElhinny@wvradio.com)

RE: Freedom of Information Request

Mr. McElhinny,

I write in response to your Freedom of Information Act (FOIA) request directed to the Supreme Court of Appeals of West Virginia dated April 24, 2018, and received here in the Administrative Office (AO) that same day.

Your request asks the AO for "copies of public records reflecting an audit of the Supreme Court by the Internal Revenue Service." You further stated that the "audit started in April 2017 and concluded in early 2018."

Regarding your request, please see attached statement of the Supreme Court of Appeals of West Virginia and IRS documents.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sarah Massey".

Sarah Massey  
Associate Administrative Counsel

Enclosures



## Supreme Court of Appeals State of West Virginia

# News

Administrative Office  
1900 Kanawha Blvd., East  
Bldg. 1, Room, E-316  
Charleston, West Virginia 25305  
(304) 340-2305 Jennifer Bundy  
(304) 340-2306 April Harless  
(304) 558-1212 FAX  
Web Site: [www.courtswv.gov](http://www.courtswv.gov)  
Facebook: [wjudiciary](https://www.facebook.com/wjudiciary)  
Twitter: [WVCourts](https://twitter.com/WVCourts)  
Flickr: [www.flickr.com/photos/courtswv/](https://www.flickr.com/photos/courtswv/)  
Email: [Jennifer.Bundy@courtswv.gov](mailto:Jennifer.Bundy@courtswv.gov)  
Email: [April.Harless@courtswv.gov](mailto:April.Harless@courtswv.gov)

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### Court releases tax audit

The Supreme Court of Appeals remains committed to transparency and accountability and to regaining the trust of West Virginia taxpayers. Recently, requests have been made for documents relating to a federal employment tax audit of the Court conducted by the Internal Revenue Service in recent months. We believe that these documents are confidential and exempt from disclosure to the public under the Freedom of Information Act (W.Va. Code § 29B-1-4(2) and (5)). First, they contain personal tax information regarding individual employees of the Court and those employees are entitled to their privacy. Moreover, under federal and state laws, the tax return documents are confidential. However, in the interest of transparency, the Court makes this statement and discloses documents relating to the IRS audit. It should be emphasized that none of the employees listed in the Proposed Notice of Adjustment documents committed any wrongdoing and **none of the employees listed are Justices.**

The federal employment tax audit of tax year 2015 conducted by the IRS beginning in April 2017 was a routine compliance audit of a broad range of issues

including payroll processes and procedures, travel reimbursements and related policies, payments to independent contractors, educational reimbursements and classification of employees. The Court cooperated fully with the audit over the course of several months.

Eventually, the IRS identified eight categories of federal tax payment adjustments that the Court needed to make. Seven of those categories related to workers classified as independent contractors who should have been treated as employees for tax purposes. The eighth category related to per diem payments that should have been treated as taxable to the employees who received them.

The Court is disclosing the eight Proposed Notice of Adjustment documents that the IRS issued in the audit process. In the interest of protecting the privacy of our employees, individual taxpayer information is redacted, consistent with the instructions from the IRS to the Court. As noted above, the Court and the IRS reached a resolution on these eight items and the Court paid the IRS \$227,541, which was calculated based on tax withholding the Court should have made. The resolution closed the audit and resolved all federal tax matters considered in the audit for tax years 2014, 2015, 2016, 2017 and 2018 through March 31. The Court is disclosing the resolution document.

The Court welcomed the opportunity to meet its obligations under federal tax law and regrets the errors made. We are fully committed to compliance with our federal tax obligations in the future.

##



Department of the Treasury  
Internal Revenue Service  
Tax Exempt and Government Entities Division  
Federal, State and Local Governments  
150 Court Street, Shonk Plaza  
Charleston, WV 25301

State of West Virginia Supreme Court of Appeals  
Attn: [REDACTED]  
1900 Kanawha BLVD E  
Charleston, WV 25305

RECEIVED  
WV SUPREME COURT

MAY - 1 2017

ADMINISTRATIVE  
OFFICE

Dear State of West Virginia Supreme Court of Appeals,

I'm conducting an audit of your federal employment tax returns for the tax periods listed above.

Call me at the telephone number listed above by the response due date to schedule the initial appointment. When you call, I'll discuss the audit process and the records requested on the enclosed Form 4564, *Information Document Request*.

I'll meet with you and your designated personnel to discuss the audit process, and interview agency personnel about employment-related practices and procedures. I'll start reviewing your books and records, discuss the expected duration of the audit, and answer questions about your federal employment tax responsibilities.

Form 4564 lists books and records I need to begin the audit. Please have these materials available at the appointment.

We may need to schedule more appointments and ask for more books and records to clarify and resolve issues. During the audit, I'll identify issues, and request and review additional information you submit.

The audit's expected length may change due to the complexity of issues, availability of staff to address questions, the requirement of specific books and records, and unforeseen delays. After we complete the audit, I'll explain unresolved issues affecting the entity's tax liabilities and discuss how to resolve them. Please ask about any adjustment you don't understand.

I encourage you to read Publication 1, *Your Rights as a Taxpayer*, which explains your rights as a taxpayer and the audit, appeals, collection, and refund processes.

You must submit a power of attorney if you want someone to represent you during any part of this audit. You can submit Form 2848, *Power of Attorney and Declaration of Representative*, for this purpose. If you decide you want representation after the audit starts, I'll delay further activity for a reasonable amount of time while you retain a representative.

You can get any forms or publications mentioned in this letter by calling 1-800-TAX-FORM (1-800-829-3676) or by visiting our website at [www.irs.gov/formspubs](http://www.irs.gov/formspubs).

The Office of Federal, State, and Local Governments (FSLG) of the IRS is responsible for the education and federal tax compliance of government entities. Information about FSLG is located on the IRS web site, [www.irs.gov](http://www.irs.gov), using search acronym "FSLG." Our goal is to ensure compliance with tax laws in the most efficient manner possible.

Date:

04/28/2017

Person to contact:

Contact ID number:

Contact telephone number:

Manager's name / ID number:

Manager's telephone number:

Tax periods:

201503, 201506, 201509, 201512

Response due date:

05/11/2017

If you have questions, you can contact me at the telephone number listed at the top of this letter. You can also speak to my manager at any time. My manager's name and telephone number are also listed in the heading of this letter.

Thank you for your cooperation.

Sincerely,

A large black rectangular redaction box covering the signature and name of the sender.

Enclosure:  
Form 4564

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 1 - AUTH</b>
<b>To:</b> State of West Virginia Supreme Court of Appeals 1900 Kanawha BLVD E Charleston, WV 25304		<b>Subject:</b> Authorization Form <b>Submitted to:</b> [REDACTED] <b>Dates of Previous Requests:</b> Initial Request

**Description of Documents Requested:**

Please complete the enclosed Authorization and Declaration Form by listing authorized individuals, sign and return during our first meeting.

The form provides to us those individuals who have been authorized to work with us during this audit and who has the authority to sign documents on behalf of the Supreme Court of Appeals.

We understand there may be changes during the audit of the Supreme Court of Appeals Personnel and we can change or update the form and authorization if this should occur.

Information Due By: To Be Determined At Next Appointment ☒ Mail In ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]		<b>Date:</b> April 28, 2017
	<b>Employee Identification Number:</b> [REDACTED]		
	<b>Office Location:</b> [REDACTED]		
		<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]	

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 2 - GEN</b>
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<b>To:</b> State of West Virginia Supreme Court of Appeals EIN: 55-6000760 1900 Kanawha BLVD E Charleston, WV 25305	<b>Subject:</b> Employment Taxes - General
	<b>Submitted to:</b> [REDACTED]
	<b>Dates of Previous Requests:</b> Initial Request

**Description of Documents Requested:**

Please have the following information for the calendar year ending 2015 available at the appointment that was scheduled for June 26<sup>th</sup> thru June 30<sup>th</sup>, 2017. Whenever possible, provide the items electronically in text (delimited), Access database, adobe or Excel spreadsheet format.

1. Provide employment contracts in effect during calendar year 2015 for all Executives
2. Organizational Chart for State of West Virginia Supreme Court of Appeals
3. Provide the State Auditor's Report for 2015 for the State of West Virginia Court of Appeals, including the management letter
4. Copies of Termination and/or Severance Agreements for all departing employees for 2015
5. List any employment related settlement payments made in 2015 including:
  - a. Name
  - b. Amount paid
  - c. If a W-2 or Form 1099 was issued and
  - d. Any documentation pertaining to the settlement
6. Provide a list of all retirement plans and benefits available to any employee or group of employees, including, but not limited to retirement plans under Internal Revenue Code sections 401(a), 403(b), 457(b), 457(f), 408(k), 408(p), etc.; early retirement incentives; severance pay; and vacation/sick leave conversion plans.
7. Please have a copy or copies of the above plan(s) available for review
8. Have copies of all documents, brochures, employee handbooks, etc. describing your retirement plans and benefits available for review
9. Provide a copy of policies and procedures that the State of West Virginia Court of Appeals has in place for all County Courts for reporting of payroll and accounts payable

The above listed items are not all inclusive. Additional information may be requested during the course of the examination.

Information Due By: June 26, 2017

At Next Appointment ☒

Mail In ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]	<b>Date:</b> May 25, 2017
	<b>Employee Identification Number:</b> [REDACTED]	
	<b>Office Location:</b> [REDACTED]	
	<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]	

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 3 – Payroll</b>
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<b>To:</b> State of West Virginia Supreme Court of Appeals EIN: 55-6000760 1900 Kanawha BLVD E Charleston, WV 25305	<b>Subject: Employment Taxes- Payroll</b> <b>Submitted to:</b> [REDACTED] <b>Dates of Previous Requests:</b> Initial Request
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**Description of Documents Requested:**

Please have the following information for the calendar year ending 2015 available at the appointment that was scheduled for June 26<sup>th</sup> thru June 30<sup>th</sup>, 2017. Whenever possible, provide the items electronically in text (delimited), Access database, adobe or Excel spreadsheet format.

1. Have the information contained on Form W-4's for all employees. It is preferred that this information be available electronically. I am looking for a list of employees, the number of allowances claimed and date of hire.
2. Copies of any correspondences received from the Internal Revenue Service or the Social Security Administration regarding the filing of Form W-2's for 2015
3. End of calendar year gross payroll summary (from the payroll journal) in electronic format (access database, Excel spreadsheet format or PDF)
4. End of calendar year individual payroll summary for each employee showing individual items of compensation and individual deductions from compensation in electronic format (text (delimited), Access database, Excel spreadsheet format or PDF)
5. Please include a definition of any codes/abbreviations used in these summaries
6. Provide a reconciliation for each of the following for calendar year 2015:
  - a. Gross Payroll (from payroll summary) to Forms 941
  - b. Gross Payroll (from payroll summary) to Medicare Wages (Form W-3 box 5)
  - c. Gross Payroll (from payroll summary) to Social Security Wages (Form W-3 box 3)
  - d. Gross Payroll (from payroll summary) to Income Taxable Wages (Form W-3 box 1)

\*\*\*\*\*Refer to example on page 3\*\*\*\*\*

Information Due By June 26, 2017

At Next Appointment ☒

Mail In ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]	<b>Date:</b> May 25, 2017
	<b>Employee Identification Number:</b> [REDACTED]	
	<b>Office Location:</b> [REDACTED]	<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]



<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 3 – Payroll</b>
<b>To:</b> State of West Virginia Supreme Court of Appeals EIN: 55-6000760 1900 Kanawha BLVD E Charleston, WV 25305		<b>Subject:</b> Employment Taxes- Payroll <b>Submitted to:</b> [REDACTED] <b>Dates of Previous Requests:</b> Initial Request
<b>Description of Documents Requested:</b>		

7. Identify and explain any nontaxable payroll item amounts. Include a detail and the basis for the nontaxable status.

Please have an individual knowledgeable about the above items available to discuss them during our first appointment.

The above listed items are not all inclusive. Additional information may be requested during the course of the examination.

Information Due By June 26, 2017

At Next Appointment ☒

Mail In ☐

FROM	<b>Name and Title of Requestor:</b> [REDACTED]		<b>Date:</b> May 25, 2017
	<b>Employee Identification Number:</b> 0770895		
	<b>Office Location:</b> [REDACTED]	<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]	

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 3 - Payroll</b>
<b>To:</b> State of West Virginia Supreme Court of Appeals EIN: 55-6000760 1900 Kanawha BLVD E Charleston, WV 25305		<b>Subject: Employment Taxes- Payroll</b> <b>Submitted to:</b> [REDACTED] <b>Dates of Previous Requests:</b> Initial Request

**Description of Documents Requested:**

*Example of reconciliation of Gross Payroll to Medicare Wages (Form W-3 box 5):*

Gross Payroll (all employees)	\$ 21,613,000.00
Deceased workers - wages paid after year of death	\$ (14,000.00)
Pre 4/1/86 hires (if no section 218 coverage)	\$ (84,000.00)
Sick pay > six months	\$ (22,000.00)
Other:	\$ -
<u>Cafeteria Plan:</u>	
Dependent Care flexible spending account	\$ (60,000.00)
Medical flexible spending account	\$ (300,000.00)
Pre-tax health insurance	\$ (200,000.00)
Other:	\$ .00
<b>Medicare Wages (Form W-3 box 5):</b>	<b>\$ 21,492,000.00</b>

*Example of reconciliation of Gross Payroll to Income Taxable Wages (Form W-3 box 1):*

Gross Payroll (all employees)	\$ 21,613,000.00
Deceased worker - all wages paid after death	\$ (10,000.00)
Retirement Plan 401(a) - employee contributions under §414(h)(2)	\$ (3,000,000.00)
Retirement Plan 403(b)	\$ (800,000.00)
Retirement Plan 457(b)	\$ (87,000.00)
Statutory Employees	\$ (18,000.00)
Other:	\$ -
<u>Cafeteria Plan:</u>	
Dependent Care flexible spending account	\$ (60,000.00)
Medical flexible spending account	\$ (300,000.00)
Pre-tax health insurance	\$ (200,000.00)
Other:	\$ .00
<b>Income Taxable Wages (Form W-3 box 1):</b>	<b>\$ 17,138,000.00</b>

Information Due By June 26, 2017

At Next Appointment ☒ X

Mail In ☐

FROM	<b>Name and Title of Requestor:</b> [REDACTED]		<b>Date:</b> May 25, 2017
	<b>Employee Identification Number:</b> 0770895		
	<b>Office Location:</b> [REDACTED]	<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]	

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number</b> 4 - FRI
<b>To:</b> State of West Virginia Supreme Court of Appeals EIN: 55-6000760 1900 Kanawha BLVD E Charleston, WV 25305		<b>Subject:</b> Employment Taxes – Fringe Benefits <b>Submitted to:</b> [REDACTED] <b>Dates of Previous Requests:</b> Initial Request

**Description of Documents Requested:**

Please have the following information for the calendar year ending 2015 available at the appointment that was scheduled for the week of June 26<sup>th</sup> thru June 30<sup>th</sup>, 2017:

- Copies of all written policies for the following, for review:
  - Accountable and/or Non-Accountable plan
  - Travel allowances and/or reimbursements
  - Automobile allowances and/or reimbursements
  - Employee use of employer provided automobile
  - Tuition reimbursements (either paid for directly or reimbursed)
  - Any other allowance and/or reimbursements (i.e. meal, entertainment, health insurance, etc.)
- A list of all fringe benefit plans available to any employee or group of employees (current or retired), including but not limited to cafeteria plans (Section 125), health plans, HAS (Health Savings Accounts), medical reimbursement plans, etc
- For any of the above plans that the WV Supreme Court of Appeals has, please provide copies of the plans for review
- Provide a list of employees that have group term life insurance over \$50,000 and if it is included in their wages the amount that is included
- Provide the following for any WV Supreme Court of Appeals owned or leased vehicles that were taken home overnight by an employee in 2015 (i.e. employees commute in vehicle):
  - Name of Employee, Job Title and SSN
  - Department
  - Make, Model and Year of Vehicle
  - Cost of the vehicle or FMV at the time placed in service
  - Mileage logs for 2015, if available
  - Amount included in wages, if any and date included
  - If amount was included in wages, provide documentation to support calculation and method used for calculation
  - WV Supreme Court of Appeals written Policy on take home vehicles

Information Due By June 26, 2017

At Next Appointment ☒

Mail In ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]	<b>Date:</b> May 25, 2017
	<b>Employee Identification Number:</b> 0770895	
	<b>Office Location:</b> [REDACTED]	<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 4 - FRI</b>
<b>To:</b> State of West Virginia Supreme Court of Appeals EIN: 55-6000760 1900 Kanawha BLVD E Charleston, WV 25305		<b>Subject: Employment Taxes -- Fringe Benefits</b> <b>Submitted to:</b> [REDACTED] <b>Dates of Previous Requests:</b> Initial Request

**Description of Documents Requested:**

6. Please provide a list of All employees, in electronic format, who received automobile allowances/reimbursements including:
- Employee's name
  - SSN
  - Date paid
  - Amount paid
  - Type of payment (allowance or reimbursement)
  - Whether any amounts were included in the employee's wages as a taxable benefit

Please have an individual knowledgeable about the above items available to discuss them during our first appointment.

The above listed items are not all inclusive. Additional information may be requested during the course of the examination.

Information Due By June 26, 2017

At Next Appointment ☒

Mail In ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]	<b>Date:</b> May 25, 2017
	<b>Employee Identification Number:</b> 0770895	
	<b>Office Location:</b> [REDACTED]	<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 5 – Info Reporting/Vendor Payments</b>
<b>To:</b> State of West Virginia Supreme Court of Appeals EIN: 55-6000760 1900 Kanawha BLVD E Charleston, WV 25305		<b>Subject:</b> Employment Taxes – Information Reporting and Vendor Payments <b>Submitted to:</b> [REDACTED] <b>Dates of Previous Requests:</b> Initial Request

**Description of Documents Requested:**

Please have the following information for the calendar year ending 2015 available at the appointment that was scheduled for June 26<sup>th</sup> thru June 30<sup>th</sup>, 2017. Whenever possible, provide the items electronically in text (delimited), Access database, adobe or Excel spreadsheet format.

1. Have Forms W-9 or equivalent for all vendors on file for 2015 available for review during the exam
2. Copies of contracts entered into with independent contractors/vendors for 2015
3. Chart of Accounts
4. Accounts Payable Distribution File (in Access database, adobe or Excel Spreadsheet format) for calendar year 2015, showing at least the following fields:
  - Date
  - Name
  - Amounts of all payments
  - Description of payment

\*If you could possibly summarize by vendor and not by date that would be great and I need 01/01/2015 through 12/31/2015.

5. Vendor master file – Typical fields may include (but not limited to):
  - Vendor EIN/SSN
  - Vendor Number
  - Vendor Name
  - Vendor Address
  - 1099 indicator

Please have an individual knowledgeable about the above items available to discuss them during our first appointment.

The above listed items are not all inclusive. Additional information may be requested during the course of the examination.

Information Due By: June 26, 2017

At Next Appointment ☒

Mail In ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]		<b>Date:</b> May 25, 2017
	<b>Employee Identification Number:</b> 0770895		
	<b>Office Location:</b> [REDACTED]		
		<b>Phone:</b> [REDACTED]	
		<b>Fax:</b> [REDACTED]	

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 6 – Form W-2/Form 1099 Matches</b>
<b>To:</b> State of West Virginia Supreme Court of Appeals EIN: 55-6000760 1900 Kanawha BLVD E Charleston, WV 25305		<b>Subject:</b> Employment Taxes – Form W-2/Form 1099 Matches <b>Submitted to:</b> [REDACTED] <b>Dates of Previous Requests:</b> Initial Request

**Description of Documents Requested:**

Please have the following information for the calendar year ending 2015 available at the appointment that was scheduled for June 26<sup>th</sup> thru June 30<sup>th</sup>, 2017. Whenever possible, provide the items electronically in text (delimited), Access database, adobe or Excel spreadsheet format.

1. The employees listed on IDR 6 – Attachment received a Form W-2 and Form 1099.
2. Provide the reason for the issuance of the W-2 (e.g. title of job, description of job duties)
3. Provide a detailed explanation for the issuance of the Form 1099 Misc

Please have an individual knowledgeable about the above items available to discuss them during our first appointment.

The above listed items are not all inclusive. Additional information may be requested during the course of the examination.

Information Due By: June 26, 2017

At Next Appointment ☒

Mail In ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]		<b>Date:</b> May 25, 2017
	<b>Employee Identification Number:</b> 0770895		
	<b>Office Location:</b> [REDACTED]	<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]	

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 7 – Mental Hygiene Commissioners</b>
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**To:**  
State of West Virginia Supreme Court of Appeals  
EIN (Last 4 digits): 0760  
1900 Kanawha BLVD E  
Charleston, WV 25305

**Subject:** Employment Taxes –  
Mental Hygiene Commissioners

**Submitted to:**

**Dates of Previous Requests:**  
Initial Request

**Description of Documents Requested:**

Please answer the following questions related to Mental Hygiene Commissioners. This Information Document Request is specific to only the Mental Hygiene Commissioners.

The Court of Appeals has historically appointed and paid these individuals through accounts payable and issued a Form 1099 Misc if a Mental Hygiene Commissioner made over \$600 in a calendar year. The IRS, under initial inspection, believes there is an Employer/Employee relationship and the compensation to Mental Hygiene Commissioners should be reported on a Form W-2 with appropriate employment taxes be withheld and/or matched. Please review the information below and determine if you concur with the IRS' initial review. If you do not concur, please provide the reasons you believe the Mental Hygiene Commissioners should continue to be considered independent contractors and compensation reported on a Form 1099 Misc.

**Background:** The term "public official" refers to someone who has authority to exercise the power of the government and does so as an agent and employee of the government. The Internal Revenue Code does not define the term "public official," but Regulation §1.1402(c)-2(b), addressing of self-employment tax, indicates that holders of "public office" are not in a trade or business and are therefore not subject to self-employment tax. This Regulation states that the performance of the functions of a public office does not constitute a trade or business. If self-employment tax is not applicable to the services, the individuals who perform them are presumed to be employees.

Mental Hygiene Commissioners are attorneys who are appointed by the court to act as judicial officers to conduct proceedings and enter orders in matters arising under West Virginia's "mental Hygiene" laws, W.Va. Code, 27-1-1 through 27-1-17. Factors that support an employer/employee relationship are listed below.

1. Mental Hygiene Commissioners are appointed public officers.

Section 1.1402(c)-2(b) of the Income Tax Regulations provides that the term "public office" includes any elective or appointive office of a state or political subdivision thereof.

Section 3401(c) of the Code, pertaining to the Collection of Income Tax at Source on Wages, defines the term "employee" as including an officer, employee or elected official of the United States, a State or any political subdivision thereof.

Information Due By: July 26, 2017

At Next Appointment ☒

Mail In ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]	<b>Date:</b> June 29, 2017
	<b>Employee Identification Number:</b> 1001509628	
	<b>Office Location:</b> [REDACTED]	<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 7 – Mental Hygiene Commissioners</b>
<b>To:</b> State of West Virginia Supreme Court of Appeals EIN (Last 4 digits): 0760 1900 Kanawha BLVD E Charleston, WV 25305		<b>Subject:</b> Employment Taxes – Mental Hygiene Commissioners <b>Submitted to:</b> [REDACTED] <b>Dates of Previous Requests:</b> Initial Request

**Description of Documents Requested:**

Section 31.3401(c)-1(a) of the Employment Tax Regulations provides that the term "employee" includes officers and employees, whether elected or appointed, of a state or political subdivision thereof.

2. Mental Hygiene Commissioners take an oath of office, hold public meetings, and report their decisions to the State Courts.

Rev. Rul. 61-113, 1961-1 C.B. 400, concludes that members who are appointed to a county hearing board pursuant to the laws of the state, who take an oath, hold public hearings, and submit their decisions to the county are not engaged in a trade or business and do not have net earnings from self-employment for purposes of section 1402 of the Code.

3. Mental Hygiene commissioner position is covered by the State's Section 218 Agreement.

IRC section 3121(d) provides that for purposes of this chapter, the term "employee" means any individual who performs services that are included under an agreement entered into pursuant to section 218 of the Social Security Act. Unless otherwise indicated by a specifically named exclusion, an absolute coverage agreement under Section 218 of the Social Security Act covers all positions for social security and Medicare purposes. There are no exclusions for appointed officials within the West Virginia Section 218 Agreement.

4. The Mental Hygiene Commissioner does not set his/her pay rate. The circuit court, by order entered of record, shall allow the commissioner a reasonable fee for services rendered in connection with each case. The courts determine the final amount to be paid. And the fees are not such as making them a fee based official as they do not receive their fees directly from the public.

IRC section 3401(a) defines "wages" as all remuneration for services performed by an employee for his employer, with certain exceptions. Section 3401(d) defines "employer" as the person for whom an individual performs any service, of whatever nature, as the employee. While section 3402 provides for income tax collected at the source.

Information Due By: July 26, 2017

At Next Appointment ☒

Mail In ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]	<b>Date:</b> June 29, 2017
	<b>Employee Identification Number:</b> 1001509628	
	<b>Office Location:</b> [REDACTED]	<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]



<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 7 – Mental Hygiene Commissioners</b>
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<b>To:</b> State of West Virginia Supreme Court of Appeals EIN (Last 4 digits): 0760 1900 Kanawha BLVD E Charleston, WV 25305	<b>Subject:</b> Employment Taxes – Mental Hygiene Commissioners <b>Submitted to:</b> [REDACTED] <b>Dates of Previous Requests:</b> Initial Request
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**Description of Documents Requested:**

5. The Mental Hygiene Commissioner operates under the authority and power of West Virginia State Law. They can sign and issue summons, subpoenas, place witnesses under oath, and make facts and finding of law.

In *Buckley v. Valeo*, 424 U.S.1 (1975), the Supreme Court found that anyone who exercises significant authority pursuant to the laws of the United States is an officer. The term "officers" embraces all appointed officials exercising responsibility under the public laws of the nation. 424 U.S. at 131. Officers perform a significant governmental duty exercised pursuant to a public law. 424 U.S. at 141. Officers administer and enforce the public law. 424 U.S. 139.

Under federal law (Supreme Court cases), an office is a public station conferred by the appointment of a government. The term embraces the idea of tenure, duration, emolument and duties fixed by law. Where an office is created, the law usually fixes its incidents, including its term, its duties, and its compensation. *Metcalf & Eddy v. Mitchel*, 269 U.S. 514, 520 (1926).

In *Pope v. Commissioner*, 138 F.2d 1006 (6th Cir. 1943), the Sixth Circuit, following *Metcalf & Eddy*, established the following standards to define the term "public office." (1) It must be created by the constitution or the legislature or by a municipality or other body with authority conferred by the legislature. (2) There must be a delegation of a portion of the sovereign powers of government to be exercised for the benefit of the public. (3) The powers conferred and the duties to be discharged must be defined either directly or indirectly by the legislature or through legislative authority. (4) The duties must be performed independently and without control of a superior power other than the law. (5) The office must have some permanency and continuity, and the officer must take an official oath of office.

The information above is not intended to be the final conclusion on the Mental Hygiene Commissioners but a starting point for our discussions.

Information Due By: July 26, 2017

At Next Appointment ☒

Mail In ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]	<b>Date:</b> June 29, 2017
	<b>Employee Identification Number:</b> 1001509628	
	<b>Office Location:</b> [REDACTED]	<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 8 – Duties of certain W2 1099 matches</b>
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**To:**

State of West Virginia Supreme Court of Appeals  
EIN (Last 4 digits): 0760  
1900 Kanawha BLVD E  
Charleston, WV 25305

**Subject:** Employment Taxes –  
Duties of certain W2 1099 matches

**Submitted to:**

**Dates of Previous Requests:**  
Initial Request

**Description of Documents Requested:**

Please answer the following questions related to the worker duties listed below. This Information Document Request is specific to only the worker duties listed below.

The following individuals received Forms W-2 and 1099 Misc. in calendar year 2015. Please provide the following information for each person:

1. Provide a description of the duties and/or services they provided. For example, individual scanned documents into Supreme Court of Appeals imaging system.
2. Did they have a business license or advertise a business for the services they provided?
3. Did they carry their own liability insurance? If so, please provide a copy.
4. Did they provide their own tools or did they use the Supreme Court of Appeals tools and/or office equipment?
5. Did the individual bid to provide the services or did the Supreme Court of Appeals offer a set hourly wage or set amount for completion of services?

Name

1099 purpose/\$

--

Information Due By: July 26, 2017

At Next Appointment ☒

Mail In ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]	<b>Date:</b> June 29, 2017
	<b>Employee Identification Number:</b> 1001509628	
	<b>Office Location:</b> [REDACTED]	<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 9 – Per diems</b>
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**To:**

State of West Virginia Supreme Court of Appeals  
EIN (Last 4 digits): 0760  
1900 Kanawha BLVD E  
Charleston, WV 25305

**Subject:** Employment Taxes –  
Per diems

**Submitted to:**

**Dates of Previous Requests:**  
Initial Request

**Description of Documents Requested:**

The following individuals were provided with per diems in 2015 and the amounts were reported on a Form 1099 Misc. Please provide receipts, travel documentation, or itemized expenditures for the payments called per diems for the following individuals.

Name	1099 purpose/\$
[REDACTED]	

Information Due By: July 26, 2017

At Next Appointment ☒

Mail In ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]		<b>Date:</b> June 29, 2017
	<b>Employee Identification Number:</b> 1001509628		
	<b>Office Location:</b> [REDACTED]		<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]

**Form 4564****Department of the Treasury  
Internal Revenue Service  
Information Document Request****Request Number  
10 – Accountable Plans W2  
1099 Match****To:**State of West Virginia Supreme Court of Appeals  
EIN (Last 4 digits): 0760  
1900 Kanawha BLVD E  
Charleston, WV 25305**Subject:** Employment Taxes –  
Accountable Plans W2 1099 Match**Submitted to:**  
[REDACTED]**Dates of Previous Requests:**  
Initial Request**Description of Documents Requested:**

The following individuals were provided with reimbursements in 2015 and these were reported on a Form 1099 Misc. Please provide receipts, travel documentation, or itemized expenditures for the payments listed below.

Name	1099 purpose/\$
[REDACTED]	

Information Due By: July 26, 2017At Next Appointment ☒Mail In ☐

FROM	<b>Name and Title of Requestor:</b> [REDACTED]		<b>Date:</b> June 29, 2017
	<b>Employee Identification Number:</b> 1001509628		
	<b>Office Location:</b> [REDACTED]		<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]

Form 4564

Page 1 of 1

IDR – 10 – Accountable  
Plans W2 1099 Match

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 11 – Form W-9 Request</b>
<b>To:</b> State of West Virginia Supreme Court of Appeals EIN (Last 4 digits): 0760 1900 Kanawha BLVD E Charleston, WV 25305		<b>Subject:</b> Employment Taxes – Form W-9 Request <b>Submitted to:</b> [REDACTED] <b>Dates of Previous Requests:</b> Initial Request

**Description of Documents Requested:**

For the following vendors please provide a copy of the W-9 "Request for Taxpayer Identification Number and Certification." (A PDF file copy of the W-9 is acceptable)

- If a vendor listed consists of only product purchased and no service provided, please discuss with me. A request may be made for sampling of invoices to verify.
- If a vendor listed was issued a 1099 MISC please provide a copy.



Information Due By: July 26, 2017

At Next Appointment ☒

Mail In ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]	<b>Date:</b> July 3, 2017
	<b>Employee Identification Number:</b> 0770895	
	<b>Office Location:</b> [REDACTED]	<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]



<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 12 – Invoice/Receipt Request</b>
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**To:**  
State of West Virginia Supreme Court of Appeals  
EIN (Last 4 digits): 0760  
1900 Kanawha BLVD E  
Charleston, WV 25305

**Subject:** Employment Taxes –  
Invoice/Receipt Request

**Submitted to:**

**Dates of Previous Requests:**  
Initial Request

**Description of Documents Requested:**

For the following vendors/employees please provide invoice/receipts for the payments made (A PDF file copy of the information is acceptable).



**Information Due By:** July 26, 2017

**At Next Appointment** ☒

**Mail In** ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [Redacted]	<b>Date:</b> July 3, 2017
	<b>Employee Identification Number:</b> 0770895	
	<b>Office Location:</b> [Redacted]	<b>Phone:</b> [Redacted] <b>Fax:</b> [Redacted]

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 12 – Invoice/Receipt Request</b>
------------------	---	--

**To:**  
State of West Virginia Supreme Court of Appeals  
EIN (Last 4 digits): 0760  
1900 Kanawha BLVD E  
Charleston, WV 25305

**Subject:** Employment Taxes –  
Invoice/Receipt Request

**Submitted to:**

**Dates of Previous Requests:**  
Initial Request

**Description of Documents Requested:**



**Information Due By:** July 26, 2017

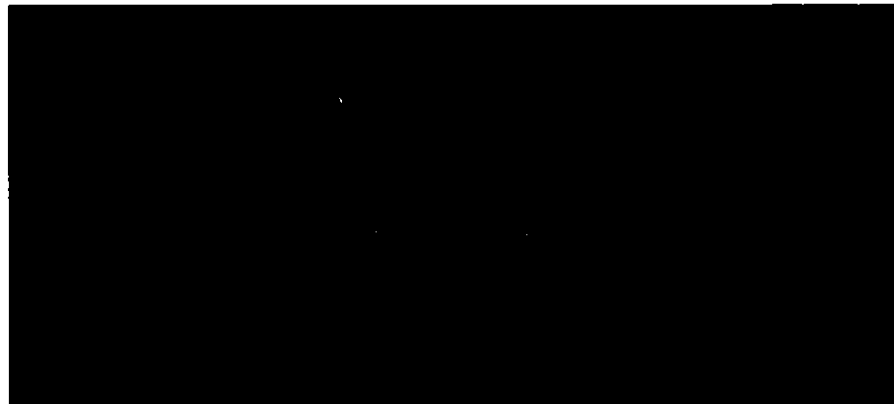
**At Next Appointment** ☒

**Mail In** ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [Redacted]	<b>Date:</b> July 3, 2017
	<b>Employee Identification Number:</b> 0770895	
	<b>Office Location:</b> [Redacted]	<b>Phone:</b> [Redacted] <b>Fax:</b> [Redacted]

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 12 – Invoice/Receipt Request</b>
<b>To:</b> State of West Virginia Supreme Court of Appeals EIN (Last 4 digits): 0760 1900 Kanawha BLVD E Charleston, WV 25305		<b>Subject:</b> Employment Taxes – Invoice/Receipt Request <hr/> <b>Submitted to:</b> [REDACTED] <hr/> <b>Dates of Previous Requests:</b> Initial Request

**Description of Documents Requested:**



The above listed items are not all inclusive. Additional information may be requested during the course of the examination.

Information Due By: <u>July 26, 2017</u>		At Next Appointment <input checked="" type="checkbox"/>	Mail In <input type="checkbox"/>
<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]		<b>Date:</b> July 3, 2017
	<b>Employee Identification Number:</b> 0770895		
	<b>Office Location:</b> [REDACTED]		<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]



<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 13- Security workers</b>
<b>To:</b> State of West Virginia Supreme Court of Appeals EIN (Last 4 digits): 0760 1900 Kanawha BLVD E Charleston, WV 25305		<b>Subject:</b> Employment Taxes – Security workers <b>Submitted to:</b> [REDACTED] <b>Dates of Previous Requests:</b> Initial Request

**Description of Documents Requested:**

Please answer the following questions related to the worker duties listed below. This Information Document Request is specific to only the worker duties listed below.

Security guards were used in the parent education program. Some payments were made to sheriff's office and some were paid to individuals. These questions refer only to the individuals.

Did the individuals have a business providing security?

Were the individuals off duty local law enforcement officials? If so, did they wear their law enforcement uniforms?

How were the individuals selected?

Did the individuals provide liability insurance?

Were they provided any instructions? Example: When and where to show up? What their responsibilities were? Did they sign any confidentiality agreements?

How where they paid? Hourly, per job, per contract?

Information Due By: <u>August 22, 2017</u>		At Next Appointment <input checked="" type="checkbox"/>	Mail In <input type="checkbox"/>
FROM	<b>Name and Title of Requestor:</b> [REDACTED]		<b>Date:</b> July 26, 2017
	<b>Employee Identification Number:</b> 1001509628		
	<b>Office Location:</b> [REDACTED]	<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]	<b>Page 1 of 1</b>
Form 4564			13 – security workers

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 14 - UJA workers</b>
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<b>To:</b> State of West Virginia Supreme Court of Appeals EIN (Last 4 digits): 0760 1900 Kanawha BLVD E Charleston, WV 25305	<b>Subject:</b> Employment Taxes – UJA workers
	<b>Submitted to:</b> [REDACTED]
	<b>Dates of Previous Requests:</b> Initial Request

**Description of Documents Requested:**

**Please answer the following questions related to the worker duties listed below. This Information Document Request is specific to only the worker duties listed below.**

(See attachment for individuals and descriptions provided by Accounts Payable file)

The Administrative Office of the Courts had (has) a project for the Uniform Judicial Application (UJA) that provided additional staff and equipment to help interface existing stand-alone systems that submit data into the CJIS agency into the UJA insuring non-interruption of submissions, improve data collection and statistical analysis reporting to the National Center for State Courts.

The descriptions of what service the individuals provide is limited in the Accounts Payable file. Please provide the following information.

Provide a description of the work the individuals provided as additional staff?

How were the individuals chosen?

Did they sign a contract for their services? If so, please provide a copy of the contract?

Did the individuals have a business providing computer services?

Did the individuals use their own equipment, the Courts equipment, or a combination of the Courts and their own equipment?

Were the services to be provided personally by the listed individual or could the individuals delegate the duties to a surrogate?

Did the individuals have their own liability insurance?

Information Due By: August 22, 2017

At Next Appointment ☒

Mail In ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]	<b>Date:</b> July 26, 2017
	<b>Employee Identification Number:</b> 1001509628	
	<b>Office Location:</b> [REDACTED]	<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]

**Form 4564****Department of the Treasury  
Internal Revenue Service  
Information Document Request****Request Number  
15 – CIP workers****To:**State of West Virginia Supreme Court of Appeals  
EIN (Last 4 digits): 0760  
1900 Kanawha BLVD E  
Charleston, WV 25305**Subject:** Employment Taxes –  
CIP workers**Submitted to:**  
[REDACTED]**Dates of Previous Requests:**  
Initial Request**Description of Documents Requested:****Please answer the following questions related to the worker duties listed below. This Information Document Request is specific to only the worker duties listed below.**

(See attachment for individuals and descriptions provided by Accounts Payable file)

House Bill 2200 (the CIP Bill) effective February 16, 2015 discusses the Court Improvement Program which is funded by the federal Administration for Children and Families and the Supreme Court of Appeals of West Virginia.

From our previous W2 1099 match IDR, we received information about an employee who provided work through this program. We are asking if the attached individuals and descriptions are similar to information provided about [REDACTED]

If there are differences in work performed, please detail.

**Information Due By:** August 22, 2017**At Next Appointment** ☒**Mail In** ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]		<b>Date:</b> July 26, 2017
	<b>Employee Identification Number:</b> 1001509628		
	<b>Office Location:</b> [REDACTED]		<b>Page 1 of 1</b>
	<b>Phone:</b> <b>Fax:</b>	[REDACTED]	

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 16 – Scanners/Abstractors</b>
<b>To:</b> State of West Virginia Supreme Court of Appeals EIN (Last 4 digits): 0760 1900 Kanawha BLVD E Charleston, WV 25305		<b>Subject:</b> Employment Taxes – Scanners/Abstractors <b>Submitted to:</b> [REDACTED] <b>Dates of Previous Requests:</b> Initial Request

**Description of Documents Requested:**

Please provide the following related to the worker duties listed below. This Information Document Request is specific to only the worker duties listed below.

A detailed list from the accounts payable file of those individuals who worked as an E-File scanner and the amounts they received for tax year 2015.

A detailed list from the accounts payable file of those individuals who worked as Abstractors and the amounts they received for tax year 2015.

Information Due By: September 12, 2017

At Next Appointment ☒

Mail In ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]		<b>Date:</b> August 25, 2017
	<b>Employee Identification Number:</b> 1001509628		
	<b>Office Location:</b> [REDACTED]		
	<b>Phone:</b> [REDACTED]	<b>Fax:</b> [REDACTED]	

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 17 – Board members</b>
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<b>To:</b> State of West Virginia Supreme Court of Appeals EIN (Last 4 digits): 0760 1900 Kanawha BLVD E Charleston, WV 25305	<b>Subject:</b> Employment Taxes – Board members
	<b>Submitted to:</b> [REDACTED]
	<b>Dates of Previous Requests:</b> Initial Request

**Description of Documents Requested:**  
 Please provide the following related to the worker duties listed below. This Information Document Request is specific to only the worker duties listed below.

Inside the Accounts Payable file, there were 7 people listed as receiving \$1,200.00 for serving as board members and were issued Forms 1099 Misc for those payments. The individual names serving as board members are: [REDACTED]

For the individuals listed above please provide the following information:

1. Are the board members elected or appointed?
2. If they are elected, how are they elected?
3. If they are appointed, who appoints them to the board they serve?
4. Provide a description of the board (s) they serve on.

Information Due By: September 12, 2017      At Next Appointment ☒      Mail In ☐

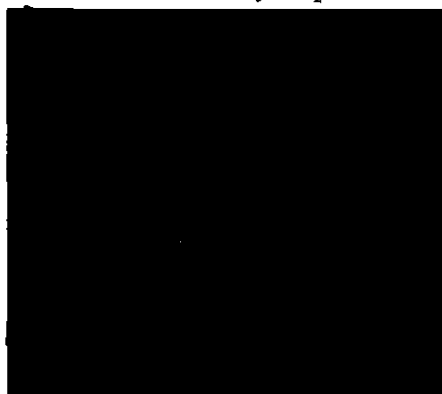
<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]	<b>Date:</b> August 25, 2017
	<b>Employee Identification Number:</b> 1001509628	
	<b>Office Location:</b> [REDACTED]	<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 18 – Case Management</b>
<b>To:</b> State of West Virginia Supreme Court of Appeals EIN (Last 4 digits): 0760 1900 Kanawha BLVD E Charleston, WV 25305		<b>Subject:</b> Employment Taxes – Case Management <b>Submitted to:</b> [REDACTED] <b>Dates of Previous Requests:</b> Initial Request

**Description of Documents Requested:**

Please provide the following related to the worker duties listed below. This Information Document Request is specific to only the worker duties listed below.

From the Accounts Payable file, the following individuals appear to be providing similar services as [REDACTED] for case management? Is this correct? If not, please provide copies of the descriptions for the services they do provide.



Information Due By: September 12, 2017

At Next Appointment ☒

Mail In ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]	<b>Date:</b> August 25, 2017
	<b>Employee Identification Number:</b> 1001509628	
	<b>Office Location:</b> [REDACTED]	<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]

<b>Form 4564</b>	<b>Department of the Treasury Internal Revenue Service Information Document Request</b>	<b>Request Number 19 – Tuition Reimbursements</b>
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**To:**  
State of West Virginia Supreme Court of Appeals  
EIN (Last 4 digits): 0760  
1900 Kanawha BLVD E  
Charleston, WV 25305

**Subject:** Employment Taxes –  
Tuition Reimbursements

**Submitted to:**  
[REDACTED]

**Dates of Previous Requests:**  
Initial Request

**Description of Documents Requested:**

Please provide the following items for calendar year 2015 by October 25, 2017.

1. The employees below received tuition reimbursements.

<u>Employee</u>	<u>Amount</u>	<u>Employee</u>	<u>Amount</u>
[REDACTED]			

2. If any of the above employees were charged additional wages for the tuition reimbursements received over the allowable amount of \$5,250.00 please provide the following:

- The payroll run for the pay period the tuition reimbursement was included as wages and subject to all appropriate employment taxes.
- The payroll runs for the pay period immediately prior to and subsequent to the pay period the tuition reimbursement was included as wages

3. If no amount was included in the employee's wages, please provide an explanation as to why the amounts were not included.

All responses will be reviewed within 10 business days of receipt and you will be notified in regard to completeness.

Information Due By: October 25, 2017

At Next Appointment ☒

Mail In ☐

<b>FROM</b>	<b>Name and Title of Requestor:</b> [REDACTED]	<b>Date:</b> October 13, 2017
	<b>Employee Identification Number:</b> 0770895	
	<b>Office Location:</b> [REDACTED]	<b>Phone:</b> [REDACTED] <b>Fax:</b> [REDACTED]

Form **5701**  
(October 2016)

Department of the Treasury - Internal Revenue Service  
**Notice of Proposed Adjustment**

Name of taxpayer State of West Virginia Supreme Court of Appeals	Issue number 1400
Name and title of person to whom delivered [REDACTED]	Date 09/12/2017
Entity for this proposed adjustment	Response due 10/24/2017

Based on the information we now have available and our discussions with you, we believe the proposed adjustment listed below should be included in the revenue agent's report. However, if you have additional information that would alter or reverse this proposal, please furnish this information as soon as possible.

Years	Amount	Account or Return Line	SAIN Number	Issue Code
2015	\$ 16,380.00 (wage)	Worker reclassification (Bar exam graders)	1400	1402

Reasons for proposed adjustment (If the explanation of the adjustment will be longer than the space provided below, the entire explanation should begin on Form 886-A (explanation of items))

See attached 886A for full details

Please review the information provided. If there are any corrections or further information you feel needs to be added to the document, please feel free to get in touch with me.

Wage adjustment for 2015 will be as follows: (full explanation on attached 886-A)

\$16,380.00 wages X 10.68% = \$1,749.38 total tax

Taxpayer's/Representative's action  
☒ Agreed ☐ Agreed in part ☐ Disagreed ☐ Have additional information; will submit by \_\_\_\_\_

Taxpayer's/Representative's Signature \_\_\_\_\_ Date 10/23/17

If disagreed in part or in full - check here for consideration of Fast Track Settlement  
☐ Taxpayer ☐ IRS

Team Manager \_\_\_\_\_ Date  
09/11/2017



Form **5701**  
(October 2016)

Department of the Treasury - Internal Revenue Service  
**Notice of Proposed Adjustment**

Name of taxpayer State of West Virginia Supreme Court of Appeals	Issue number 1400
Name and title of person to whom delivered [REDACTED]	Date 09/14/2017
Entity for this proposed adjustment	Response due 10/24/2017

Based on the information we now have available and our discussions with you, we believe the proposed adjustment listed below should be included in the revenue agent's report. However, if you have additional information that would alter or reverse this proposal, please furnish this information as soon as possible.

Years	Amount	Account or Return Line	SAIN Number	Issue Code
2015	\$140,563 (wage)	Worker reclassification (Judges, magistrates - per diems)	1400	1402

Reasons for proposed adjustment (If the explanation of the adjustment will be longer than the space provided below, the entire explanation should begin on Form 886-A (explanation of items))

See attached 886A for full details

Please review the information provided. If there are any corrections or further information you feel needs to be added to the document, please feel free to get in touch with me.

Wage adjustment for 2015 will be as follows:(full explanation on attached 886-A)

\$140,563 wages X 10.68% = \$15,012.13 total tax

Taxpayer's/Representative's action

☒ Agreed ☐ Agreed in part ☐ Disagreed ☐ Have additional information; will submit by

Taxpayer's/Representative's signature

Date  
10/23/17

If disagreed in part or in full, check here for consideration of Fast Track Settlement

☐ Taxpayer ☐ IRS

Team Manager

Date  
09/13/2017

Form **5701**  
(October 2016)

Department of the Treasury - Internal Revenue Service

## Notice of Proposed Adjustment

Name of taxpayer State of West Virginia Supreme Court of Appeals	Issue number 1400
Name and title of person to whom delivered [REDACTED]	Date 09/14/2017
Entity for this proposed adjustment	Response due 10/24/2017

Based on the information we now have available and our discussions with you, we believe the proposed adjustment listed below should be included in the revenue agent's report. However, if you have additional information that would alter or reverse this proposal, please furnish this information as soon as possible.

Years	Amount	Account or Return Line	SAIN Number	Issue Code
2015	\$ 850.00 (wage)	Worker reclassification (janitor)	1400	1402

Reasons for proposed adjustment (If the explanation of the adjustment will be longer than the space provided below, the entire explanation should begin on Form 886-A (explanation of items))

See attached 886A for full details

Please review the information provided. If there are any corrections or further information you feel needs to be added to the document, please feel free to get in touch with me.

Wage adjustment for 2015 will be as follows: (full explanation on attached 886-A)

\$850.00 wages X 10.68% = \$ 90.78 total tax

Taxpayer's/Representative's action

☒ Agreed ☐ Agreed in part ☐ Disagreed ☐ Have additional information; will submit by

Taxpayer's/Representative's signature  
[REDACTED]

Date

10/23/17

If disagreed in part or in full - check here for consideration of Fast Track Settlement

☐ Taxpayer ☐ IRS

Tax Manager  
[REDACTED]

Date

09/13/2017

Form **5701**  
(October 2016)

Department of the Treasury - Internal Revenue Service

## Notice of Proposed Adjustment

Name of taxpayer State of West Virginia Supreme Court of Appeals	Issue number 1400
Name and title of person to whom delivered [REDACTED]	Date 09/14/2017
Entity for this proposed adjustment	Response due 10/24/2017

Based on the information we now have available and our discussions with you, we believe the proposed adjustment listed below should be included in the revenue agent's report. However, if you have additional information that would alter or reverse this proposal, please furnish this information as soon as possible.

Years	Amount	Account or Return Line	SAIN Number	Issue Code
2015	\$ 9,600.00 (wage)	Worker reclassification (board members commission)	1400	1402

Reasons for proposed adjustment (If the explanation of the adjustment will be longer than the space provided below, the entire explanation should begin on Form 886-A (explanation of items))

See attached 886A for full details

Please review the information provided. If there are any corrections or further information you feel needs to be added to the document, please feel free to get in touch with me.

Wage adjustment for 2015 will be as follows: (full explanation on attached 886-A)

\$9,600.00 wages X 10.68% = \$1,025.28 total tax

Taxpayer's/Representative's action

☒ Agreed ☐ Agreed in part ☐ Disagreed ☐ Have additional information; will submit by

Taxpayer

Date 10/23/17

If disagreed in part or in full - check here for consideration of Fast Track Settlement

☐ Taxpayer ☐ IRS

Team Manager

Date  
09/13/2017

Form **5701**  
(October 2016)

Department of the Treasury - Internal Revenue Service  
**Notice of Proposed Adjustment**

Name of taxpayer State of West Virginia Supreme Court of Appeals	Issue number 1400
Name and title of person to whom delivered [REDACTED]	Date 09/28/2017
Entity for this proposed adjustment	Response due 10/24/2017

Based on the information we now have available and our discussions with you, we believe the proposed adjustment listed below should be included in the revenue agent's report. However, if you have additional information that would alter or reverse this proposal, please furnish this information as soon as possible.

Years	Amount	Account or Return Line	SAIN Number	Issue Code
2015	\$ 18,100 wages	Worker reclassification (CIP data analyst)	1400	1402

Reasons for proposed adjustment (If the explanation of the adjustment will be longer than the space provided below, the entire explanation should begin on Form 886-A (explanation of items))

See attached 886A for full details

Please review the information provided. If there are any corrections or further information you feel needs to be added to the document, please feel free to get in touch with me.

Wage adjustment for 2015 will be as follows:

\$ 18,100 wages X 10.68% (see discussion on IRC § 3509 below) = \$ 1,933.08 total tax

Taxpayer's/Representative's action

☒ Agreed ☐ Agreed in part ☐ Disagreed ☐ Have additional information; will submit by

Taxpayer's/Representative's signature

Date

10/23/17

If disagreed in part or in full, check here for consideration of Fast Track Settlement

☐ Taxpayer ☐ IRS

Team Manager

Date

09/28/2017

Form **5701**  
(October 2016)

Department of the Treasury - Internal Revenue Service  
**Notice of Proposed Adjustment**

Name of taxpayer State of West Virginia Supreme Court of Appeals	Issue number 1400
Name and title of person to whom delivered [REDACTED]	Date 09/28/2017
Entity for this proposed adjustment	Response due 10/24/2017

Based on the information we now have available and our discussions with you, we believe the proposed adjustment listed below should be included in the revenue agent's report. However, if you have additional information that would alter or reverse this proposal, please furnish this information as soon as possible.

Years	Amount	Account or Return Line	SAIN Number	Issue Code
2015	\$ 793,257.94 wages	Worker reclassification (Scanners Abstractors Effie)	1400	1402

Reasons for proposed adjustment (If the explanation of the adjustment will be longer than the space provided below, the entire explanation should begin on Form 886-A (explanation of items))

See attached 886A for full details.

Please review the information provided. If there are any corrections or further information you feel needs to be added to the document, please feel free to get in touch with me.

Wage adjustment for 2015 will be as follows: (full explanation on attached 886-A)

\$ 793,257.94 wages X 10.68% (see discussion on IRC § 3509 below) = \$ 84,719.95 total tax

Taxpayer's/Representative's action

☒ Agreed ☐ Agreed in part ☐ Disagreed ☐ Have additional information; will submit by

Taxpayer's/Representative's signature

Date

10/23/17

If disagreed in part or in full - check here for consideration of Fast Track Settlement

☐ Taxpayer ☐ IRS

Team Manager

Date

09/28/2017

Form **5701**  
(October 2016)

Department of the Treasury - Internal Revenue Service

## Notice of Proposed Adjustment

Name of taxpayer State of West Virginia Supreme Court of Appeals	Issue number 1400
Name and title of person to whom delivered [REDACTED]	Date 10/02/2017
Entity for this proposed adjustment	Response due 10/24/2017

Based on the information we now have available and our discussions with you, we believe the proposed adjustment listed below should be included in the revenue agent's report. However, if you have additional information that would alter or reverse this proposal, please furnish this information as soon as possible.

Years	Amount	Account or Return Line	SAIN Number	Issue Code
2015	\$136,216.00 wages	Worker reclassification (Case managers)	1400	1402

Reasons for proposed adjustment (If the explanation of the adjustment will be longer than the space provided below, the entire explanation should begin on Form 886-A (explanation of items))

See attached 886A for full details

Please review the information provided. If there are any corrections or further information you feel needs to be added to the document, please feel free to get in touch with me.

Wage adjustment for 2015 will be as follows:

\$136,216.00 wages X 10.68% (see discussion on IRC § 3509 below) = \$ 14,547.87 total tax

Taxpayer's/Representative's action

☒ Agreed ☐ Agreed in part ☐ Disagreed ☐ Have additional information; will submit by

Taxpayer's/Representative's signature

Date

10/23/17

If disagreed in part or in full - check here for consideration of Fast Track Settlement

☐ Taxpayer ☐ IRS

Team Manager

Date

09/29/2017

Form **5701**  
(October 2016)

Department of the Treasury - Internal Revenue Service  
**Notice of Proposed Adjustment**

Name of taxpayer State of West Virginia Supreme Court of Appeals	Issue number 1402
Name and title of person to whom delivered [REDACTED]	Date 10/13/2017
Entity for this proposed adjustment	Response due 10/31/2017

Based on the information we now have available and our discussions with you, we believe the proposed adjustment listed below should be included in the revenue agent's report. However, if you have additional information that would alter or reverse this proposal, please furnish this information as soon as possible.

Years	Amount	Account or Return Line	SAIN Number	Issue Code
2015	\$ 1,015,566.66 wages	Worker reclassification (UJA)	1400	1402

Reasons for proposed adjustment (If the explanation of the adjustment will be longer than the space provided below, the entire explanation should begin on Form 886-A (explanation of items))

See attached 886A for full details

Please review the information provided. If there are any corrections or further information you feel needs to be added to the document, please feel free to get in touch with me.

Wage adjustment for 2015 will be as follows:

\$ 1,015,566.66 wages X 10.68% (see discussion on IRC § 3509 below) = \$ 108,462.52 total tax

Taxpayer's/Representative's action	
<input checked="" type="checkbox"/> Agreed	<input type="checkbox"/> Agreed in part <input type="checkbox"/> Disagreed <input type="checkbox"/> Have additional information; will submit by
Taxpayer's/Representative's Signature [REDACTED]	Date 10/23/17
If disagreed in part or in full - check here for consideration of Fast Track Settlement	
<input type="checkbox"/> Taxpayer	<input type="checkbox"/> IRS
Team Manager [REDACTED]	Date 10/13/2017

**Closing Agreement On Final Determination Covering Specific  
Matters Regarding Worker Classification**

Under section 7121 of the Internal Revenue Code ("IRC"), State of West Virginia Supreme Court of Appeals, 1900 Kanawha BLVD E, Charleston, WV 25305, Taxpayer Identification Number 55-8000760, ("taxpayer") and the Commissioner of Internal Revenue ("Commissioner") make the following closing agreement:

**WHEREAS**, there is a dispute between the parties as to whether certain workers classified by taxpayer as Bar Exam Graders, Board of Law Examiners and Commissions, Janitors, Judges/Magistrates, CIP Data Analysts, Scanners/Abstractors/E-File Workers, Case Managers and UJA Workers are independent contractors or employees of taxpayer for purposes of federal income tax withholding, Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) taxes ("federal employment tax");

**WHEREAS**, the taxpayer is presently treating the Bar Exam Graders, Board of Law Examiners and Commissions, Janitors, Judges/Magistrates, CIP Data Analysts, Scanners/Abstractors/E-File Workers, Case Managers and UJA Workers as independent contractors;

**WHEREAS**, the taxpayer has timely filed Forms 1099 for each of its Bar Exam Graders, Board of Law Examiners and Commissions, Janitors, Judges/Magistrates, CIP Data Analysts, Scanners/Abstractors/E-File Workers, Case Managers and UJA Workers for all applicable periods from January 1, 2015 through December 31, 2015, in accordance with the provisions of paragraph 3.02 of Rev. Proc. 85-18, 1985-1 C.B. 518, and Rev. Rul. 81-224, 1981-2 C.B. 197; and

**WHEREAS**, the parties wish to resolve this dispute for all Bar Exam Graders, Board of Law Examiners and Commissions, Janitors, Judges/Magistrates, CIP Data Analysts, Scanners/Abstractors/E-File Workers, Case Managers and UJA Workers engaged by the taxpayer on or after January 1, 2014.

**NOW IT IS HEREBY DETERMINED AND AGREED** for federal employment tax purposes that:

- (1) The Internal Revenue Service will assess and the taxpayer will pay the following amounts to the United States Government in full discharge of any federal employment tax liability it may owe for the periods shown below resulting directly or indirectly from its failure to pay and/or withhold federal income tax, FICA, or FUTA taxes on the payments to its Bar Exam Graders, Board of Law Examiners and Commissions, Janitors, Judges/Magistrates, CIP Data Analysts, Scanners/Abstractors/E-File Workers, Case Managers and UJA Workers:

Period	Type of Tax	Amount to be Assessed	
		Tax	Penalties
January 1, 2015 - December 31, 2015	FICA and Income Tax Withholding	\$227,541.00	

- (2) The Internal Revenue Service will not disturb taxpayer's classification of such Bar Exam Graders, Board of Law Examiners and Commissions, Janitors, Judges/Magistrates, CIP Data Analysts, Scanners/Abstractors/E-File Workers, Case Managers and UJA Workers for federal employment tax purposes for any period from January 1, 2014 through March 31, 2018.
- (3) Beginning April 1, 2018, and for all periods thereafter, Bar Exam Graders, Board of Law Examiners and Commissions, Janitors, Judges/Magistrates, CIP Data Analysts, Scanners/Abstractors/E-File Workers, Case Managers and UJA Workers and persons performing equivalent duties regardless of taxpayer's job titles will be treated as employees for all federal employment tax purposes.

**Closing Agreement With State of West Virginia Supreme Court of Appeals**

- (4) The taxpayer waives any right it may have to claim relief under section 530 of the Revenue Act of 1978.
- (5) IRC Section 6205 shall apply to the amounts contained in paragraph (1) above, except FUTA tax.



This agreement is final and conclusive except:

- (1) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material facts;
- (2) it is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions, (including any stated exception for Code section 7122) notwithstanding any other law or rule of law; and
- (3) if it relates to a tax period ending after the date of this agreement, it is subject to any law, enacted after the agreement date, that applies to the tax period.

By signing, the above parties certify that they have read and agreed to the terms of this document.

Taxpayer

Taxpayer name State of West Virginia Supreme Court of Appeals

By 

Date signed 01-12-2018

Title

Taxpayer's Representative

By 1/1

Date signed

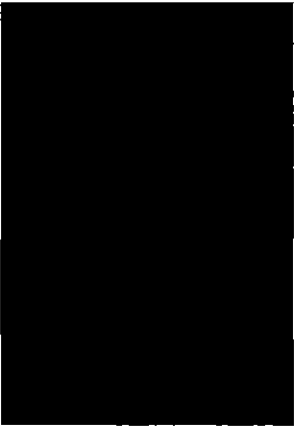
Commissioner of Internal Revenue

By 

Date signed

Title

1/30/2018



Slab 2 West Virginia Supreme Court Appeals



1900 KANAWHA BLD. E,

Building 1, Room E-100

Charleston, WV 25305

