

SYNOPSIS

PERSONAL INCOME TAX -- PART-YEAR RESIDENT -- EXECUTIVE BRANCH MUST FOLLOW STATUTORY METHOD OF TAX COMPUTATION, NOT TAXPAYER'S CREATED METHOD OF TAX COMPUTATION -- In computing the West Virginia personal income tax liability of a part-year West Virginia resident, the State Tax Commissioner and, upon review, the West Virginia Office of Tax Appeals, as parts of the executive branch of state government, are required, by the separation of powers clause of the State Constitution, W. Va. Const. art. v, § 1, to adhere to the method of computing such liability set forth by the Legislature in the statutes, particularly W. Va. Code §§ 11-21-30 [1992] and 11-21-44 [1992], instead of following an alternative method of computing such liability created by the taxpayer and described by the taxpayer as more "fair and equitable."

FINAL DECISION

On October 28, 2002, the Petitioners, husband and wife, filed an amended 2002 part-year West Virginia personal income tax return, as a claim for refund of West Virginia personal income tax for the period of January 01, 2002 through October 08, 2002. By a letter whose dates of execution and receipt are not clearly stated in the record, the Personal Income Tax Unit of the Internal Auditing Division of the West Virginia State Tax Commissioner's Office denied the entire claim for refund on the ground, essentially, that the refund claim did not comply with the substantive personal income tax statutes.

Thereafter, by mail postmarked April 08, 2003, the Petitioner timely (presumably) filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for refund.

There was no appearance on behalf of the Petitioner when the hearing was convened. The hearing was held, however, without an appearance on behalf of the Petitioner, in accordance with the provisions of W. Va. Code § 11-10A-10(a) [2002].

FINDINGS OF FACT

1. The Petitioners were residents of the State of West Virginia during the period of January 01, 2002 through October 08, 2002. They were residents of another state for the remainder of the calendar year 2002.
2. The Petitioners' original part-year West Virginia resident return for the period in question complied with the method of computing West Virginia personal income tax liability set forth in the relevant statutes, including W. Va. Code §§ 11-21-30 and 11-21-44.
3. The Petitioners' amended return (claim for refund) does not comply with these statutes; instead, the Petitioners create an alternative method that they believe is more "fair and equitable," in that it is based upon income restricted to the period of West Virginia residency (in lieu of the statutory apportionment method).*

CONCLUSIONS OF LAW

1. In computing the West Virginia personal income tax liability of a part-year West Virginia resident, the State Tax Commissioner and, upon review, the West Virginia Office of Tax Appeals, as parts of the executive branch of state government, are required, by the separation of powers clause of the State Constitution, W. Va. Const. art. v, § 1, to adhere to the method of computing such liability set forth by the Legislature in the statutes, particularly W. Va. Code §§ 11-21-30 [1992] and 11-21-44 [1992], instead of following an alternative method of computing such liability created by the taxpayer and described by the taxpayer as more "fair and equitable."
2. In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon the petitioner-taxpayer, to show that the petitioner-taxpayer is entitled to the refund. See W. Va. Code § 11-10A-10(e) [2002].
3. In light of conclusion of law no. 1, the Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to entitlement to the requested tax refund.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that all of the Petitioner's petition for refund of West Virginia

* The Petitioners' method of tax computation includes deducting itemized deductions. Since January 01, 1987, West Virginia personal income tax law does not recognize any itemized deductions. W. Va. Code § 11-21-15(e) [1987].

personal income tax, for the period of January 01, 2002 through October 08, 2002, is hereby **DENIED**.