

## SYNOPSIS

**PERSONAL INCOME TAX –BURDEN OF PROOF NOT MET –** Refusal, without stating any valid reason, by the Petitioner(s) to be placed under oath mandates that the challenge to the West Virginia personal income tax assessment be dismissed and the assessment be affirmed in toto, because the taxpayers failed to meet the burden of proof requirement set forth in W. Va. Code § 11-10A-10(e) [2002]. See *also* W. Va. Code § 11-10A-10(d) [2002] and 121 C.S.R. 1, § 64.1 (Apr. 20, 2003), requiring all testimony to be under oath at the evidentiary hearing before the West Virginia Office of Tax Appeals.

## FINAL DECISION

The Compliance Division of the West Virginia State Tax Commissioner's Office issued a West Virginia personal income tax assessment against the Petitioners, husband and wife.

This assessment was for the years 1999, 2000, and 2001, for tax, interest, through March 6, 2003, and additions to tax.

Written notice of this assessment was served on the Petitioners.

Thereafter, by mail, the Petitioners timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. See W. Va. Code § 11-10A-8(1) [2002].

## PROCEDURAL HISTORY

On June 12, 2003, Petitioner (husband), sent correspondence to the Chief Administrative Law Judge ("CALJ") with the West Virginia Office of Tax Appeals, wherein the Petitioner stated, in part, that when Petitioner filed his petition for reassessment he also filed a so-called "Notice of Defense," requesting information, irrelevant on its face, for the upcoming hearing and that, to date, he had received no

answers to his questions and needed to know to whom he should direct his request for answers.

On July 3, 2003, the CALJ responded, in pertinent part, that Petitioner's attorney should direct any relevant pre-hearing inquiries to the Legal Division of the State Tax Commissioner's Office, at P. O. Box 1005, Charleston, West Virginia 25324.

On July 18, 2003, a West Virginia county Circuit Court Judge upheld the prior administrative decision issued against the Petitioners for personal income tax owed for tax years 1996, 1997, and 1998 (identical legal issues).

The Judge determined that these same Petitioners had not carried their burden of showing that the subject assessment in that matter was incorrect or contrary to law. Additionally, he ruled that there is no constitutional bar, either federal or state, to the imposition of income taxes upon the Petitioners and that the Petitioners did not otherwise establish that they had no taxable income in regard to West Virginia income taxes.

By certified mail on October 29, 2003, Petitioner (husband) filed a so-called "Affidavit of Default" (?) to Tax Commissioner, Rebecca Melton Craig, stating that the alleged failure by the Tax Commissioner to respond to Petitioner's earlier "Notice of Defense," should, in his opinion, invalidate all taxes assessed against the Petitioners.

Although denied a continuance on October 21, 2003 by the administrative law judge, Petitioner (husband) did again move for a continuance at the outset of the administrative hearing, arguing that his reason for doing so was because he had not

received unspecified information to prepare for the hearing. Commissioner's counsel then requested that, before the Petitioner proceeded further, he should be placed under oath, and the administrative law judge concurred.

To that ruling, Petitioner (husband) protested, saying that he was now acting as his own attorney and that he was not there as a witness and would not testify under oath or be cross-examined. Because the administrative law judge found that Petitioner was, indeed, attempting to testify as a witness, the administrative law judge refused to allow the Petitioner to proceed unsworn. The Petitioners did not bring any other witnesses to the evidentiary hearing.

Petitioner (husband) stated that he was not prepared to go forward because (1) the requested, unspecified information had not been received; (2) because the new procedural rules had "changed everything," and he was not familiar with them; and (3) because he allegedly never received the CALJ's July 3, 2003 correspondence, even though it was mailed to the address set forth in the petition, as authorized by the procedural rules.

As a result of Petitioner's (husband) refusal to give testimony under oath during his challenge to the assessment, the administrative law judge ruled that he had no alternative but to find the Petitioners liable for the entire assessment.

### **FINDINGS OF FACT**

1. Because the Petitioner (husband) refused, without valid reason, to proceed under oath at the evidentiary hearing, as mandated by W. Va. Code § 11-10A-10(d) [2002] and 121 C.S.R. 1, § 64.1.1 (Apr. 20, 2003), the Petitioners have failed to show that the assessment is incorrect and contrary to law, in whole or in part, see W. Va. Code § 11-10A-10(e) [2002].

## CONCLUSIONS OF LAW

Based upon all of the above it is **DETERMINED** that:

1. W. Va. Code § 11-10A-10(d) [2002] and 121 C.S.R. 1, § 64.1.1 (Apr. 20, 2003) mandate that all testimony shall be given under oath during the presentation of one's case at the evidentiary hearing before the West Virginia Office of Tax Appeals.

2. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment the burden of proof is upon the petitioner-taxpayer to show that the assessment is incorrect and contrary to law, in whole or in part. See W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

3. The Petitioners-taxpayers in this matter have failed to carry the burden of proof with respect to this issue, see 121 C.S.R. 1, § 69.2 (April 20, 2003), because of the refusal to present any testimony under oath or any other evidence (not "legal" arguments).

4. It should be noted that with respect to the "legal" issues raised by the Petitioners in their petition for reassessment, the same all lack merit and are, therefore, rejected.

## DISPOSITION

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the West Virginia personal income tax assessment issued against the Petitioners for the years 1999, 2000, and 2001, for tax, interest, updated through December 31, 2003, and additions to tax, is hereby **AFFIRMED**.

Interest continues to accrue on this unpaid personal income tax at a daily rate until this particular tax liability is fully paid.