

**SANITIZED DEC. 04-479 P – BY GEORGE V. PIPER – SUBMITTED FOR  
DECISION 10/06/04 – ISSUED 10/19/04**

**SYNOPSIS**

**PERSONAL INCOME TAX -- INTEREST ON U.S. OBLIGATIONS AND SENIOR CITIZEN'S EXCLUSION** -- Because W. Va. Code § 11-21-12(c)(1) unequivocally excludes from taxation all interest derived from United States obligations (savings bonds) without any cap to limit same, the statute is not invalid or incorrect, notwithstanding the fact that the Legislature has reasonably limited the overall senior citizen's exclusion in W. Va. Code § 11-21-12(c)(8)(i); the senior citizen's exclusion is not required at all and certainly may be capped based upon other exclusions.

**FINAL DECISION**

In June, 2004, the Accounts Monitoring Unit of the Internal Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) issued a personal income tax assessment against the Petitioners. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for the year 2003, for tax of interest, through June, 2004, and additions to tax for a total assessed liability. Written notice of this assessment was served on the Petitioners.

Thereafter, by mail postmarked July, 2004, 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].

Subsequently, notice of a hearing on the petition was sent to the Petitioners and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002] and 121 C.S.R. 1, § 61.3.3 (Apr. 20, 2003).

### **FINDINGS OF FACT**

1. During the 2003 tax year Petitioners, who are senior citizens, received in interest earnings from United States savings bonds; however, as a means of protest, Petitioners intentionally entered a zero amount on Line 39(c) of Schedule M on their initial 2003 West Virginia personal income tax return.

2. Within a few weeks, Petitioners received a refund check for the amount requested, and believed that, because they had received same, the Tax Commissioner had agreed with their protest and would take appropriate measures to correct what they considered to be a mistake in the tax laws caused by the manner in which they are required to report tax exempt income.

3. Petitioners were ultimately sent a notice of assessment demanding return of the refund which the Tax Commissioner found had been erroneously made.

4. Both sides argue that the relevant computation of West Virginia taxable income for senior citizens “as provided in the appropriate tax forms” is as follows: WV Taxable Income = Federal Adjusted Gross Income minus interest on US Obligations, and minus maximum senior citizen’s exclusion, which takes into account, among other things, excluded interest income on United States obligations.

## DISCUSSION

The only issue is whether the Petitioners have shown that the State of West Virginia unlawfully imposes its personal income tax on United States savings bond interest received by senior citizens.

W. Va. Code § 11-21-12(c) lists the modifications that can reduce federal adjusted gross income, one of which is (1) Interest income on obligations of the United States and its possessions to the extent includible in gross income for federal income tax purposes; . . .and another is (8) Federal adjusted gross income in the amount of eight thousand dollars received from any source after the thirty-first day of December, one thousand nine hundred eighty-six, by any person who has attained the age of sixty-five...

Notwithstanding the above, in that same subsection (12c) it reads: Provided, however, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is eight thousand dollars per person or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6) and (7) of this subsection is less than eight thousand dollars per person, the total modification allowed under this subdivision for all income received by that person shall be limited to the difference between eight thousand dollars and the sum of modifications under subdivisions (1), (2), (5), (6) and (7) of this subsection;

Petitioners argue that the limitations imposed on the senior citizens reducing modification contained in W. Va. Code § 11-21-12(c)(8) have the effect of imposing tax on savings bond interest, which has previously been excluded from tax under W. Va. Code § 11-21-12(c)(1).

This tribunal, however, concludes otherwise, because W. Va. Code § 11-21-12(c)(1) exempts or otherwise excludes any and all income derived from the United States obligations, such as savings bonds without any cap placed therein.

It is also clear that W. Va. Code § 11-21-12(c)(8) in concert with 12(c)(8)(i) and (ii) were adopted by the West Virginia Legislature to deal singularly with the senior citizen exclusion, which the Legislature had every right to do.

Accordingly, it is DETERMINED that because W. Va. Code § 11-21-12(c)(1) excludes all savings bond interest from state taxation and because the West Virginia Legislature had every right to limit the senior citizens exclusion, neither is invalid as applied to the Petitioners' tax filing.

It should be noted that the parties were duly informed at the outset of the administrative hearing that this tribunal did not have the authority to hold any section or subsection of the personal income tax statute unconstitutional and that short of that prohibition, this tribunal would render its decision based solely upon language in the statute and whether the same could be lawfully applied.

The issues presented in this matter involve the following important rules of administrative agency authority and statutory construction. Initially, it is important at all times to recognize and to give more than just "lip service" to two general points: (1) rather than utilizing a purely "*de novo*" scope of review, due deference is to be given by all

reviewing tribunals to the expertise of the administrative agency, in this case, the State Tax Commissioner, even with respect to an “issue of law,” when that issue of law is one within the expertise of the administrative agency, *see Appalachian Power Co. v. State Tax Department*, 195 W. Va. 573, 582, 466 S.E.2d 424, 433 (1995); and (2) any applicable legislative regulation does not merely reflect the administrative agency’s position but, instead, has been legislatively reviewed and approved, has exactly the same force and effect as a statute, and is, therefore, subject to the usual, deferential rules of statutory construction, *see Feathers v. West Virginia Board of Medicine*, 211 W. Va. 96, 102, 562 S.E.2d 488, 494 (2002).

The following specific points flow from these general points. “[I]f the statute is silent or ambiguous with respect to the specific issue, the question for the [reviewing] court [including this tribunal] is whether the agency’s answer is based on a permissible construction of the statute.” Syllabus point 4, in part, *Appalachian Power Co. v. State Tax Department*, 195 W. Va. 573, 466 S.E.2d 424 (1995) (emphasis added). Similarly, “the Tax Commissioner need not write a rule that serves the statute in the best or most logical manner; he [or she] need only write a rule that flows rationally from the statute.” *Id.*, 195 W. Va. at 588, 466 S.E.2d at 439 (emphasis added). Thus, “[i]nterpretations of statutes by bodies charged with their administration are given great weight unless clearly erroneous.” Syllabus point 3, *Shawnee Bank, Inc. v. Paige*, 200 W. Va. 20, 488 S.E.2d 20 (1997) (internal citation omitted) (emphasis added). Finally, “courts will not override administrative agency decisions, of whatever kind, unless the decisions contradict some explicit constitutional provision or right, are the results of a flawed process, or are either fundamentally unfair or

arbitrary.” *Appalachian Power*, 195 W. Va. at 589, 466 S.E.2d at 440 (quoting *Frymier-Halloran v. Paige*, 193 W. Va. 687, 694, 458 S.E.2d 780, 787 (1995)).

## CONCLUSIONS OF LAW

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

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon a 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, § 63.1 (Apr. 20, 2003).

2. The Petitioners-taxpayers in this matter have failed to carry the burden of proof with respect to the issue of whether limiting the Petitioners, as senior citizens, to the total modification constitutes the taxation of savings bond interest income, because all savings bond interest is in fact excluded from taxation pursuant to W. Va. Code § 11-21-12(c)(1). *See* 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

## DISPOSITION

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the Petitioners

for the year 2003, for tax of interest and additions to tax **totaling** should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002], **interest accrues** on this personal income tax assessment until this liability is fully paid.

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### APPEAL PROCEDURES

If an aggrieved party wishes to appeal this Final Decision to an appropriate West Virginia circuit court, W. Va. Code § 11-10A-19(a), as last amended, sets forth that such an appeal must be filed within sixty (60) days after the date of service of this Final Decision upon the party. W. Va. Code § 11-10A-19, as last amended, sets forth the outline for the procedure for the appeal to circuit court (an appeal petition filing fee is normally required), including, in most cases, filing an appeal bond by a taxpayer. Under W. Va. Code § 11-10A-19(b), as last amended, the West Virginia Office of Tax Appeals (or one or more of its administrative law judges), as a totally independent, quasi-judicial tribunal, is not a party to the appeal and is not to be named as a party to the appeal.

On the other hand, under W. Va. Code § 11-10A-19(f), as last amended, and under W. Va. Code § 29A-5-4(b), as last amended, to provide the record to the circuit court, the **appellant** to the circuit court is to provide the West Virginia Office of Tax Appeals (as well as the other party to the appeal, that is, the State Tax Commissioner's Office or the Taxpayer) with a certified copy of the filed petition for appeal (showing the circuit court in which the

petition was filed, the date filed, and the “civil action number” for the appeal from an administrative agency), along with a certified copy of any order filing the petition or of any other initial process document setting forth the directives of the court with respect to processing the appeal.

Within fifteen (15) days after receipt of this written notice of the appeal, or within such further time as the circuit court may allow, the West Virginia Office of Tax Appeals, pursuant to the provisions of W. Va. Code § 29A-5-4(d), as last amended, will prepare and transmit to the circuit court a certified copy of the entire record in the matter.

As set forth in W. Va. Code § 11-10A-14(c) [2002] and 121 C.S.R. 1, § 86 (Apr. 20, 2003) (Rules of Practice and Procedure before the West Virginia Office of Tax Appeals), the West Virginia Office of Tax Appeals will: (1) send to the parties a detailed index of the record at the same time it transmits to the circuit court a certified copy of the entire record, § 86.4; (2) at the same time send to the appellant(s) a bill (payable to the “State of West Virginia”), due within twenty (20) calendar days, for the reasonable costs of preparing the record, § 86.3; and (3) upon payment of such record preparation costs, send to the parties a certified copy of the entire record.

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