

**SANITIZED DEC. 04-655 P – BY GEORGE V. PIPER – SUBMITTED FOR DECISION  
ON 12-16-04 – ISSUED ON 12-17-04**

**SYNOPSIS**

**PERSONAL INCOME TAX** -- The inability of a taxpayer to pay the amount of tax, interest, and additions to tax is irrelevant to the validity of the assessment and, in the absence of evidence that the assessment is erroneous, unlawful, void or otherwise substantively invalid, the assessment will be affirmed.

**PERSONAL INCOME TAX -- TAXPAYERS' FAILURE TO CARRY BURDEN OF PROOF** -- The failure of taxpayers to articulate adequate grounds in their petition for reassessment justifying their claim, combined with their failure to appear at a hearing and to present any evidence respecting their claim, will result in a denial of relief to the taxpayer. *See* W. Va. Code § 11-10A-10(e) [2002]; 121 C.S.R. 1, §§ 63.1 and 69.2 (Apr. 20, 2003).

**FINAL DECISION**

On August 31, 2004, the Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued an assessment for personal income tax against the Petitioner. 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 calendar year 2003, for tax, interest computed through August 31, 2004, and additions to tax, for a total assessed liability. Written notice of the assessment was served on the Petitioner.

Thereafter, by mail received in the offices of the West Virginia Office of Tax Appeals, on October 12, 2004, the Petitioner timely filed a petition for reassessment. With their petition for reassessment, the Petitioners paid an amount of tax. Petitioner had previously paid another sum.

Thereafter, by letter dated October 29, 2004, and sent via certified mail, return receipt requested, the Petitioner were given notice of the evidentiary hearing in this matter. The Petitioners received the notice, as evidenced by United States Postal Service Form "PS Form

3811, August 2001, Domestic Return Receipt,” which was personally signed for by the Petitioner on December 16, 2004.

At the time scheduled for convening the evidentiary hearing, there was no appearance on behalf of the Petitioner. The evidentiary 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] and 121 C.S.R. 1, § 69.1 (Apr. 20, 2003).

### **FINDINGS OF FACT**

1. In his petition for reassessment, the Petitioner did not assert any explanation why the assessment was incorrect other than submitting a copy of a postal money order.

2. The grounds articulated by the Petitioner are inadequate to show that the assessment, or any of its individual components, were erroneously or unlawfully assessed, or are void or otherwise invalid.

3. The Petitioner was provided with notice that he was required to appear at the evidentiary hearing and present evidence respecting the reasons he believed that the assessment was erroneous, unlawful, void or otherwise invalid.

4. The Petitioner did not appear at the time and place of the hearing and presented no evidence to justify waiving the additions to tax, or any part thereof.

5. The Respondent presented “State’s Exhibit No. 4,” a copy of the Petitioners’ West Virginia personal income tax return, Form WVIT-140, which shows that the Petitioner had federal adjusted gross income for calendar year 2003 with a resulting tax liability of another amount which remains unpaid.

## CONCLUSIONS OF LAW

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

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon the Petitioner to show that any assessment of tax against them is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code § 11-10A-10(e) [2002]; 121 C.S.R. 1, §§ 63.1 and 69.2 (Apr. 20, 2003).
2. The Petitioner in this matter has failed to carry his burden of proving that any assessment of taxes against them is erroneous, unlawful, void or otherwise invalid.
3. The inability of the Petitioner to pay interest, additions to tax or tax is irrelevant to the issue of whether or not those items are properly assessed by the Tax Commissioner.

## DISPOSITION

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the Petitioner for calendar year 2003, for tax, interest computed through August 31, 2004, and additions to tax, for a total assessed liability, should be and is hereby **MODIFIED**, to reflect tax owed, leaving interest computed through August 31, 2004, and additions to tax, for a total modified liability.

Interest continues to accrue on this modified tax liability until the same is fully paid.

## 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, requires that such appeal 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, outlines the procedure for the appeal to circuit court (an appeal petition filing fee is normally required), including, in most cases, the filing of 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 made 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) 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 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.