

**SANITIZED DEC. 04-702 P – BY ROBERT W. KIEFER, JR. – SUBMITTED FOR
DECISION 05/18/05 – ISSUED 10/12/05**

SYNOPSIS

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]; W. Va. Code. St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

FINAL DECISION

On August 23, 2004, the Unit Manager of the Accounts Monitoring Unit of the Internal Auditing Division of the West Virginia State Tax Commissioner's Office ("the Commissioner") issued an assessment for personal income tax 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 years 2000, 2001 and 2002, for tax in the amount of interest in the amount computed through August 23, 2004, and additions to tax in the amount for a total assessed tax liability. Written notice of this assessment was served on the Petitioners.

Thereafter, by mail postmarked October 25, 2004, received in the offices of this tribunal, the West Virginia Office of Tax Appeals, on October 27, 2004, the Petitioners timely filed a petition for reassessment. Subsequently, notice of the evidentiary hearing in this matter was furnished to the Petitioners by letter dated April 15, 2005, sent to the mailing address shown on their petition for reassessment. This notice of the evidentiary hearing was served upon the Petitioners on May 5, 2005, as evidenced by United States Postal Service Form PS 3811, August 2001, Domestic Return Receipt (the "Green Card") signed.

At the time scheduled for convening the small claims hearing, there was no appearance on behalf of the Petitioners. The small claim hearing was held, however, without an appearance on behalf of the Petitioners, in accordance with the provisions of W. Va. Code § 11-10A-10(a) [2002] and W. Va. Code. St. R. § 121-1-69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. In their petition for reassessment, the Petitioners asserted that the adjusted gross income upon which estimated amounts of the assessment were based exceeded the Petitioners' actual adjusted gross income, and that the Petitioners would file tax returns that would show the actual amount of their adjusted gross income.

2. There is no evidence to show that prior to the scheduled hearing, the Petitioners filed tax returns for the years covered by the assessment.

3. For the years covered by the assessment, the Petitioners presented no evidence to show that their adjusted gross income was less than the amount upon which the State Tax Commissioner assessed personal income tax against them.

4. The allegations set out in the Petitioners' petition for reassessment, absent some evidence to support those allegations, are inadequate to show that the assessment is erroneous, unlawful, void or otherwise invalid.

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

6. The Petitioners did not appear at the time and place of the hearing and presented no evidence respecting any of their allegations.

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 Petitioners to show that any assessment of tax against him is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code § 11-10A-10(e) [2002]; W. Va. Code. St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).
2. The Petitioners in this matter have failed to carry their burden of proving that the assessment of taxes against them is erroneous, unlawful, void or otherwise invalid.

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 years 2000, 2001 and 2002, for tax in the amount of, interest in the amount, computed through August 23, 2004, and additions to tax in the amount, for a total assessed tax liability 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 modified personal income tax assessment until this liability is fully paid.