

**SANITIZED DECISION -- 05-464 P & 05-609 P – BY GEORGE V. PIPER, ALJ –
SUBMITTED for DECISION on JUNE 6, 2006 -- ISSUED on JUNE 19, 2006**

SYNOPSIS

PERSONAL INCOME TAX -- BURDEN OF PROOF NOT MET -- Failure of the Petitioner to appear at hearing or to otherwise prove that the assessments are incorrect and contrary to law, in whole or in part, mandates that the same be upheld *in toto*.

FINAL DECISION

On August 1, 2005, the Internal Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) issued a West Virginia 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 2002, for tax of \$, interest, through August 1, 2005, of \$, no regular additions to tax, an estimated tax “penalty” of \$, less payment of \$, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioner as required by law.

Thereafter, by mail postmarked August 19, 2005, 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] and 11-10A-9(a)-(b) [2002].

Also, on January 31, 2006, the Internal Auditing Division of the Commissioner’s Office issued a West Virginia personal income tax assessment against the Petitioners. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provision of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for the year 2003, for tax of \$, interest, through January 31, 2006, of \$,

and regular additions to tax of \$, less payment of \$, for a total assessed tax liability of \$.
Written notice of this assessment was served on the Petitioners as required by law.

Thereafter, by mail postmarked February 13, 2006, the Petitioners timely filed with this tribunal, the West Virginia Office of Tax Appeals, petitions for reassessment. *See* W. Va. Code § 11-10A-8(1) [2002] and 11-10A-9(a)-(b) [2002].

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

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, *see* 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. Petitioners, husband and wife, are residents of the State of West Virginia, although one spouse works full time in the District of Columbia.

2. In July, 2001, Petitioner began working in Washington, D.C. and was immediately informed by the federal government agency employer there that West Virginia personal income taxes “could” (actually, would) not be withheld from his pay.

3. Petitioner filed a part-year West Virginia return in 2001, sending in his federal W-2 forms without event, and in 2002 and 2003 filed as a full-year West Virginia resident, again submitting his W-2 forms and receiving small refunds for both years.

4. Petitioner, upon filing his 2004 West Virginia full-year West Virginia personal income tax return, was informed by Respondent in a letter dated April 26, 2005, “there are no provisions in the West Virginia Code that enable us to transfer money from

one state to another. You must file a return in the state which the tax was withheld. West Virginia tax withheld was corrected to agree with the W-2 statement(s) submitted.”

5. In due course the Petitioner filed a Form D40B DC Nonresident Request for Refund with his District of Columbia employer and received in May, 2005, his withheld taxes for tax year 2003, as well as his 2002 withheld taxes shortly thereafter.

6. Upon receiving these refund checks from the District of Columbia, the Petitioner made payment to Respondent for tax years 2002 and 2003.

7. The delay in filing the West Virginia return for tax years 2002 and 2003 resulted in the assessments for interest and the penalties. Prior to the time of the hearing the Division agreed to waive the estimated tax penalty for tax year 2002 as well as the additions to tax for tax year 2003.

DISCUSSION

The only issue to be decided is whether Petitioners have made a showing in their petitions for reassessment that the interest in both assessments should be abated due to at least some “fault” on the part of the Respondent.

Petitioners blame Respondent for misleading them in that it processed refunds for 2002 and 2003 and issued refunds both times before finding a problem as late as 2004, and state that Petitioners have acted honorably in this matter.

This tribunal has no doubt that Petitioners have acted in good faith throughout this entire episode; however, there is simply no avenue to abate interest in this case.

During the years in question, Petitioners did not comply with West Virginia law, because for whatever reason their employer was not withholding West Virginia personal income taxes, which it could have been doing from the inception of the Petitioner’s employment. The fact that the federal government did not handle the matter properly

back in 2001 does not supplant Petitioners' obligations with the State of West Virginia, and therefore there are no grounds for abatement of interest for either of the tax years.

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

2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with their contention that they do not owe the interest in question.

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 2002, for tax of \$, interest of \$, no regular additions to tax, and an estimated tax "penalty" of \$, less payment of \$, totaling \$, should be and is hereby **MODIFIED** in accordance with the above Conclusions of Law for **interest and a total revised liability of \$**; the estimated tax "penalty" is, however, **VACATED** in full.

It is **ALSO** 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 of \$, and regular additions to tax of \$, less payment of \$, totaling \$, should be and is hereby **MODIFIED** in accordance with the above Conclusions of Law for **interest and a total revised liability of \$**; the regular **ADDITIONS** to tax are, however, **VACATED** in full.

