

**SANITIZED DECISION – DOCKET NO. 05-523 P – GEORGE V. PIPER, ALJ –
SUBMITTED for DECISION on DECEMBER 21, 2005 – ISSUED on DECEMBER
29, 2005**

SYNOPSIS

PERSONAL INCOME TAX -- ITEMIZED DEDUCTIONS NOT

ALLOWED -- Pursuant to W.Va. Code § 11-21-15 (c), no West Virginia itemized deduction is allowed as a subtraction from federal adjusted gross income after December 31, 1986.

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 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 2004 for tax and interest, through August 1, 2005, and additions to tax for a total assessed liability. Written notice of this assessment was served on the Petitioners.

Thereafter, by mail postmarked September 29, 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].

Subsequently, notice of a hearing on the petition 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.V. Code St. R. § 121-1-61.3.3 (Apr. 20, 2003).

FINDINGS OF FACT

1. The assessment resulted from Petitioners' taking a subtraction from federal adjusted gross income on line 3 their West Virginia resident income tax return for tax year 2004. The subtraction was for the total of alleged itemized deductions. The Respondent subsequently disallowed same.

2. For federal income tax purposes Petitioners were allowed to take said subtraction on Form 2106 (Employee Business Expenses) in arriving at taxable net income for tax year 2004.

3. Pursuant to W.Va. Code § 11-21-15 (c), all itemized deductions, including those for business expenses (not reimbursed), are not allowed as a subtraction from federal adjusted gross income after December 31, 1986.

DISCUSSION

The only issue is whether the Petitioners have shown that the Respondent should have allowed Petitioners to subtract their un-reimbursed business expenses for West Virginia personal income tax purposes because the same is allowed as an employee business expense for federal income tax purposes.

At the outset of the hearing Petitioner was advised that this executive-branch tribunal did not have the authority to hold any section of the personal income tax statute unconstitutional on its face, and that this tribunal would, instead, render its decision based solely upon language in the statute.

Effective December 31, 1986 no taxpayer is allowed to take itemized deductions on line 3 of the West Virginia resident income tax return, even though Petitioners may lawfully continue to itemize for federal income tax purposes.

Quite simply the statute says what it says and it is clear that it is being applied the same to all concerned. To allow Petitioners to take their un-reimbursed business expenses would violate the clear language of the statute and is not permissible.

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 Petitioners- taxpayers in this matter have failed to carry the burden of proof with respect to their contention that they should be allowed to deduct un-reimbursed business expenses for state income tax purpose because the federal government allows them to do so. *See* W. Va. Code St. R. § 121-1-69.2 (Apr. 20, 2003).

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the West Virginia personal tax assessment issued against the Petitioners for the year 2004 for tax, interest, and additions to tax, 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.