

**SANITIZED DECISION--DOCKET NO. 05-557 W--GEORGE V. PIPER, ALJ--
SUBMITTED for DECISION on JANUARY 12, 2006--ISSUED on JANUARY 25,
2006**

SYNOPSIS

WITHHOLDING TAX-- BURDEN OF PROOF NOT MET--Failure of the Petitioner to appear at hearing or to otherwise prove that the assessment is incorrect and contrary to law, in whole or in part, mandates that the same be upheld in *toto*. See W. Va. Code § 11-10A-10(e) [2002] and W. Va. Code St. R. § 121-1-63.1 (Apr. 20, 2003).

FINAL DECISION

On October 15, 2005, the Internal Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) issued a withholding tax assessment 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 the period ended February 29, 2004, for tax and interest, through October 15, 2005, and additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked October 20, 2005, the Petitioner timely filed with this tribunal, the West Virginia 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.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. Petitioner filed a withholding tax return for February, 2004 reflecting the fact that it had no employees and no payroll.

2. Respondent's counsel placed into evidence (State's Exhibit No.4) a memo from a Revenue Agent, which determined that, based upon other reliable evidence, Petitioner did have withholdings liabilities for the assessed period and that Petitioner's zero withholdings return would not be acceptable.

DISCUSSION

The only issue is whether the Petitioner has shown that the assessment issued against it is incorrect and contrary to law, in whole or in part.

In this case Petitioner did not appear or otherwise prove that the assessment is incorrect, and, therefore, this tribunal has no recourse but to uphold same in its entirety.

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-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 respect to its contention that it owed no withholding taxes for the period in question. *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 withholding tax assessment issued against the Petitioner for the period ended February 29, 2004, for tax, 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 tax assessment until this liability is fully paid.