

**REDACTED DECISION -- 06-576 P -- BY GEORGE V. PIPER, ALJ --
SUBMITTED for DECISION on JANUARY 09, 2007 -- ISSUED on JANUARY 19,
2007**

SYNOPSIS

PERSONAL INCOME TAX -- TAXPAYER'S FAILURE TO CARRY BURDEN OF PROOF -- The taxpayer's failure to appear at hearing or to otherwise present any evidence respecting the claim set forth in its petition for assessment 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 (April. 20, 2003).

FINAL DECISION

On October 4, 2006, the Accounts Monitoring Unit of 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 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 year 2004, for tax of \$, interest, through October 4, 2006 of \$, and additions to tax 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 October 11, 2006, the Petitioner 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) [2005].

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. In its petition for reassessment Petitioner argued that all disputed taxes were paid as evidenced by a closure notice sent to the Petitioner by the Internal Revenue Service (IRS).

2. At the hearing Respondent's counsel argues that Petitioner may have paid her federal taxes on the income received from the source in question, but not her West Virginia state income taxes owed on that same income.

DISCUSSION

The only issue is whether Petitioner has shown that the assessment is erroneous or otherwise invalid.

In this case, Petitioner provided absolutely no evidence proving that the West Virginia personal income tax liability for tax year 2004 was paid.

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 in this matter has failed to carry its burden of proof that the assessment is erroneous, unlawful, void, or otherwise invalid.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the West Virginia personal income tax assessment issued against the Petitioner for the tax year 2004, for tax of \$, interest of \$, and additions to tax, of \$, **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 the liability is fully paid.