

REDACTED DECISION -- 07-358 P -- BY GEORGE V. PIPER, ALJ -- SUBMITTED for DECISION on SEPTEMBER 19, 2007 -- ISSUED on SEPTEMBER 21, 2007

SYNOPSIS

PERSONAL INCOME TAX -- PETITIONER'S FAILURE TO CARRY BURDEN OF PROOF -- The failure of the Petitioner to articulate adequate grounds in its petition for reassessment justifying its claim, combined with its failure to appear at a hearing and to present any evidence respecting its 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 April 15, 2007, the Accounts Monitoring Unit of the Internal Auditing "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 tax of \$_____, less payment of \$_____, plus interest, through April 15, 2007, of \$_____, and additions to tax of \$_____, for a total assessed tax liability of \$_____. Written notice of this assessment was served on the Petitioner as required by law.

Thereafter, by mail postmarked May 18, 2007 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 § 121-61.3.3 (April 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 his petition for reassessment, Petitioner argued that he did not receive a tax credit in the amount of \$_____ for the tax year 2004 which should have been applied to tax year 2005.

2. At the hearing Respondent's counsel submitted into the record a copy of a State warrant showing that Respondent had in fact refunded that same sum of \$_____ to Petitioner on November 22, 2005.

DISCUSSION

The only issue is whether the 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 assessment for tax year 2005 was not correct.

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 the burden of proof that the assessment is erroneous, unlawful, void or otherwise invalid. *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 personal tax assessment issued against the Petitioner for the year 2005, for tax of \$_____, less payment of \$_____, plus 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 continues to accrue** on this personal income tax assessment until this liability is fully paid.