

**REDACTED DECISION – DOCKET # 08-255 RP – BY ROBERT W. KIEFER, JR., ALJ
– SUBMITTED FOR DECISION on MAY 5, 2009 – ISSUED on JUNE 1, 2009.**

SYNOPSIS

PERSONAL INCOME TAX – TAXPAYER’S FAILURE TO CARRY BURDEN OF PROOF -- The failure of the taxpayer to articulate adequate grounds in his petition for refund justifying his claim, combined with his failure to appear at a hearing and to present any evidence respecting his 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 or about August 20, 2008, a Unit Manager of the Internal Auditing Division of the West Virginia State Tax Commissioner’s Office (“the Commissioner”) issued an assessment for personal income tax against the Petitioner’s deceased. 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 in the amount of \$____, interest in the amount of \$____, and additions to tax in the amount of \$____, for a total assessed tax liability of \$____. According to the petition for reassessment, written notice of this assessment was served on the Petitioner on or about September 10, 2008.

Thereafter, by hand delivery on November 7, 2008, the Petitioner timely filed a petition for reassessment and refund. W. Va. Code §§ 11-10A-8(1) [2007] and 11-10A-9 [2005].

On or about March 3, 2009, a prehearing was held, at which time the Petitioner requested additional time in which to acquire information from third parties to prove that the deceased was entitled to the refund requested. The evidentiary hearing was continued to May 5, 2009.

At the time scheduled for convening the evidentiary hearing, there was no appearance on behalf of the Petitioner. The hearing was held, however, without an appearance on behalf of the

Petitioner, in accordance with the provisions of 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 and refund, the Petitioner asserted that the State Tax Commissioner had failed to give his decedent credit for a prior year's refund and amounts that were allegedly withheld by third parties.

2. The grounds articulated by the Petitioner, without sufficient evidence to support them, are inadequate to show that the assessment is erroneous, unlawful, void or otherwise invalid.

3. The Petitioner was provided with notice that he was required to appear at the evidentiary hearing and present evidence respecting the reasons he believed that the assessment was erroneous, unlawful, void or otherwise invalid.

4. The notice, which was sent to the Petitioner by certified mail, return receipt requested, was not claimed by the Petitioner.

5. The Petitioner did not appear at the time and place of the hearing and presented no evidence respecting any of his allegations.

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 to show that any assessment of tax against him is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code § 11-10A-10(e) [2002]; W. Va. Code. St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

2. The Petitioner in this matter has failed to carry his burden of proving that any assessment of taxes against him is erroneous, unlawful, void or otherwise invalid.

3. In a hearing before the West Virginia Office of Tax Appeals on a petition for refund, the burden of proof is upon the Petitioner to show that he is entitled to the refund claimed by him. *See* W. Va. Code § 11-10A-10(e) [2002]; W. Va. Code. St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

4. The Petitioner in this matter has failed to carry his burden of proving that he is entitled to the refund claimed.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the Petitioner's decedent for the year 2004, for tax in the amount of \$____, interest in the amount of \$____, and additions to tax in the amount of \$____, for a total assessed tax liability of \$____, 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.