

**REDACTED DECISION—09-073 P, 09-074 C, 09-075 CU, 09-076 U, 09-077 W — BY
MICHELE DUNCAN BISHOP, CHIEF ALJ—SUBMITTED FOR DECISION on MAY 4,
2010 —ISSUED on NOVEMBER 4, 2010.**

OVERVIEW

Petitioner filed petitions for reassessment related to one assessment issued by the State Tax Department on January 2, 2009, and four assessments issued on December 26, 2008. The total amount in dispute, including tax, interest, and additions is \$____, plus any interest that may continue to accrue while the assessment remains unpaid.

FINDINGS OF FACT

1. The petitioner, a certified public accountant, failed to file West Virginia personal income tax returns for the years 2000 through 2007, and was, as a result, issued an estimated audit notice of assessment on January 2, 2009, in the amount of \$____ for state personal income tax, interest, and additions.

2. The petitioner also failed to file returns for his business for several periods in the years 2003 through 2008.

3. As a result of his failure to file returns related to his business, the petitioner was issued an estimated audit notice of assessment on December 26, 2008, in the amount of \$____ for the period July 1, 2007 through June 30, 2008 for consumers sales tax, interest, and additions.

4. As a result of his failure to file returns related to his business, the petitioner was issued an estimated audit notice of assessment on December 26, 2008, in the amount of \$____ for the period July 1, 2008 through November 30, 2008 for combined sales and use tax, interest, and additions.

5. As a result of his failure to file returns related to his business, the petitioner was issued an estimated audit notice of assessment on December 26, 2008, in the amount of \$_____ for the period October 1, 2003 through June 30, 2008 for purchasers use tax, interest, and additions.

6. As a result of his failure to file returns related to his business, the petitioner was issued an estimated audit notice of assessment on December 26, 2008, in the amount of \$_____ for the period January 1, 2006 through December 31, 2007 for withholding tax, interest, and additions.

7. By letter dated April 9, 2010, the petitioner requested a continuance of the prehearing conference and evidentiary hearing of this matter. The stated basis for the request was to allow the petitioner additional time to prepare information requested by the respondent's counsel. Administrative Law Judge Robert W. Kiefer, Jr., the judge to whom this case was assigned at the time, verbally denied the request.

8. A prehearing conference was conducted on or about April 19, 2010.¹ The conference was conducted telephonically by Judge Kiefer. The petitioner was advised at that time that he should file returns in the contested matters.

9. The evidentiary hearing was conducted on or about May 4, 2010.² The petitioner did not appear.

10. The Office of Tax Appeals has received no communication from the petitioner since that time, and his absence from the evidentiary hearing remains unexplained.

¹ Judge Kiefer's February 16, 2010 Continuance: Notice of Prehearing Conference and Notice of Evidentiary Hearing shows that the prehearing conference was scheduled for April 20, 2010, but according to the hearing transcript, the conference was instead conducted telephonically one day earlier than scheduled.

² Judge Kiefer's February 16, 2010 Continuance: Notice of Prehearing Conference and Notice of Evidentiary Hearing shows that the evidentiary hearing was scheduled for May 4, 2010, and several file notations show it was conducted on that date; however, Judge Kiefer's verbal notations on the record, as well as one handwritten note, indicate, without explanation, that the hearing was conducted on May 5, 2010.

11. The petitioner has submitted no returns for any of the periods in question.

12. The petitioner has submitted no evidence in support of his position.

DISCUSSION

In a hearing before the West Virginia Office of Tax Appeals, the burden of proof is on the petitioner to show that any assessment of tax against him is erroneous, unlawful, void, or otherwise invalid. W.Va. Code § 11-10A-10(e) [2002]. The respondent appeared, by counsel, and presented audit information relevant to each of the assessments in question. The information was based on estimates and comparisons to similarly-situated individuals and businesses. The petitioner, though invited to submit, at a minimum, returns specific to him and his business, submitted absolutely no evidence contrary to the respondent's audit information. *See Respondent's Exh. 1 through 5.* There appears nothing on the face of the respondent's exhibits to suggest that the audits were not properly conducted or that the conclusions, and thus the assessments, were improper.

DETERMINATION

1. The petitioner has failed to carry his burden of proof.

2. The five assessments of the West Virginia State Tax Department, one dated January 2, 2009, and the remaining four dated December 26, 2008, together with accrued and accruing interest, are AFFIRMED.