

**REDACTED DECISION—09-398—BY GEORGE V. PIPER, ALJ—SUBMITTED FOR DECISION on JUNE 15, 2010 —ISSUED on DECEMBER 6, 2010.**

**SYNOPSIS**

**PERSONAL INCOME TAX -- BURDEN OF PROOF** -- 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 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).

**PERSONAL INCOME TAX -- TAXPAYERS' CARRY BURDEN OF PROOF** -- Corrected personal income tax returns filed by Petitioners and accepted by Respondent in lieu thereof will supplant a previously issued estimated tax assessment.

**FINAL DECISION**

On October 15, 2009, a supervisor of the Compliance Division of the West Virginia State Tax Commissioner's Office ("the respondent") issued a personal income tax assessment against the petitioners. 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 years 2005, 2006, and 2007, for tax in the amount of \$\_\_\_\_, interest in the amount of \$\_\_\_\_, and additions to tax of \$\_\_\_\_, for a total assessed tax liability of \$\_\_\_\_. Written notice of this assessment was served on the petitioners as required by law.

Thereafter, by mail postmarked November 13, 2009, the petitioners timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. W.Va. Code §§ 11-10A-8(1) [2007] and 11-10A-9 [2005].

At the time scheduled for convening the evidentiary hearing, there was no appearance on behalf of the petitioners. The evidentiary hearing was conducted 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. As a result of an audit program whereby the Internal Revenue Service makes available to Respondent tax filings of West Virginia residents, it was revealed that the amount of taxable income reported by Petitioners for federal income tax purposes did not correspond with the amount of taxable income reported by Petitioners for state income tax purposes. This difference is the basis for the assessment.

2. In their petition for reassessment, Petitioners asserted that the amount of tax reflected in the personal income tax assessment was too high.

3. Petitioners were provided with notice that they were required to appear at the evidentiary hearing and present evidence supporting their assertion that the assessment was erroneous, unlawful, void or otherwise invalid.

4. At the outset of the evidentiary hearing, Respondent's counsel stated that within thirty days prior to the hearing, the petitioners had forwarded personal income tax returns to Respondent showing personal income tax owed of \$\_\_\_\_, interest in the amount of \$\_\_\_\_ and additions to tax of \$\_\_\_\_, for a total liability of \$\_\_\_\_.

5. Respondent's counsel further stated that although Petitioners had not appeared at the time and place of the hearing, Respondent was prepared to accept the returns in lieu of the estimated amounts which were assessed.

6. Respondent's counsel finally stated that the discrepancy between Petitioner's federal and state tax filings occurred because Petitioners mistakenly claimed Virginia tax withholding as West Virginia tax withholding.

### **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 on 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 petitioners in this matter have carried their burden of proving that any assessment of taxes against them is erroneous, unlawful, void or otherwise invalid by submitting corrected personal income tax returns for all three tax years which were accepted by Respondent.

### **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the petitioners for tax years 2005, 2006 and 2007, for tax in the amount of \$\_\_\_\_, interest in the amount of \$\_\_\_\_ and additions to tax of \$\_\_\_\_ totaling \$\_\_\_\_ should be and is

hereby **MODIFIED** for revised tax in the amount \$\_\_\_\_, interest in the amount of \$\_\_\_\_ and additions to tax of \$\_\_\_\_ for a revised tax liability of \$\_\_\_\_\_.

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.