

**REDACTED DECISION – DK# 11-037 P – BY – GEORGE V. PIPER,
ADMINISTRATIVE LAW JUDGE – SUBMITTED FOR DECISION on MAY 4, 2011 –
ISSUED ON OCTOBER 31, 2011**

**FINAL ORDER DISMISSING PETITION WITH PREJUDICE
UNDER OTA PROCEDURAL RULES 49.9 AND 54.2
FOR FAILURE TO APPEAR AT PREHEARING CONFERENCE
AND TO OTHERWISE PROSECUTE THIS MATTER AS REQUIRED BY LAW**

On January 20, 2011, the Respondent, State Tax Commissioner issued a personal income tax assessment against the Petitioners, for tax in the amount of \$____, interest in the amount of \$____, and additions to tax in the amount of \$____ for a total assessment of \$____. Notice of the assessment was served upon the Petitioners as required by law.

On February 7, 2011, this Tribunal received a petition for reassessment from the Petitioners, which was deemed to have been timely filed. *See* W. Va. Code Ann. §§ 11-10A-8(1) and 11-10A-9 (West 2010). Thereafter, by letter dated April 6, 2011, this Tribunal advised the Petitioners that: 1) It was incumbent upon the Petitioners to contact counsel for the Respondent and conduct a counsel conference; 2) The prehearing conference was scheduled; and 3) The evidentiary hearing was scheduled. This notice of the counsel conference, prehearing conference and evidentiary hearing was served upon the Petitioners on April 7, 2011, as evidenced by United States Postal Service Form PS 3811, February 2004, Domestic Return Receipt (Green Card), which appears to have been signed for by Ms. A.

At no time did the Petitioners request a postponement of the prehearing conference. The Petitioners did not join in the required prehearing statement nor submit their own prehearing statement. The Petitioners did not appear at the scheduled prehearing conference. After waiting, for approximately, twenty minutes following the scheduled time for this prehearing conference, counsel for the Respondent moved to dismiss this matter on the grounds that the Petitioner failed to attend the prehearing conference and to otherwise prosecute this matter as required.¹ This motion to dismiss was **GRANTED**.

Accordingly, this Tribunal does hereby **ORDER** that the petition for reassessment in this matter is **DISMISSED, WITH PREJUDICE**. Pursuant to Section 54.4, Title 121, Series 1, of the West Virginia Code of State Rules, this dismissal operates as a final adjudication on the merits. Accordingly, the assessment is hereby **AFFIRMED**, and the assessment is now due and payable.

¹ Section 49.9 of the Rules of Practice and Procedure before the West Virginia Office of Tax Appeals gives this Tribunal discretion to dismiss a matter when a Petitioner fails to appear for a scheduled prehearing conference. See W. Va. Code R. § 121-1-49.9 (2003). Additionally, Section 54.2 of the procedural rules allows the presiding administrative law judge to dismiss an appeal at any time when the Petitioner fails to properly prosecute the same. See W.Va. Code R. § 121-1-54.4 (2003).