

**SANITIZED DEC – DOCKET NO – 04-184W – GEORGE V. PIPER –  
SUBMITTED – JUNE 2, 2004 – ISSUED – JUNE 24, 2004**

**SYNOPSIS**

**WITHHOLDING TAX – ADDITIONS TO TAX WAIVED** – Additions to tax will be waived when at hearing Tax Commissioner’s counsel affirmatively states that the circumstances of the case warrant a finding of reasonable cause. *See* W. Va. Code § 11-10-18(a)(1)-(2).

**FINAL DECISION**

On January 15, 2004, the Accounts Monitoring Unit of the Internal Auditing Division of the West Virginia State Tax Commissioner’s Office issued a withholding 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 the period of January 1, 2001, through September 30, 2001, for tax, interest, through January 15, 2004, and additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner.

Subsequently, notice of a hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002] and 121 C.S.R. 1, § 61.3.3 (Apr. 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 121 C.S.R. 1, § 69.1 (Apr. 20, 2003).

## FINDINGS OF FACT

1. In her petition for reassessment, Petitioner stated that on February 15, 2001 and June 6, 2001, she had remitted sums respectively, to be applied to the withholding tax debt; however, at hearing Tax Commissioner's counsel stated that said checks had never been received by the State Tax Department.

2. Prior to the time of the hearing, Petitioner remitted the tax portion of the assessment.

## DISCUSSION

The sole issue is whether the Petitioner has shown reasonable cause for waiver of additions to tax pursuant to W. Va. Code § 11-10-18(a)(1)-(2).

In this case Tax Commissioner's counsel stated at hearing that the Petitioner had shown reasonable cause for waiver of the additions to tax; however, interest waiver or abatement was not authorized by statutory law in this case.

## 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 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 121 C.S.R., 1 § 63.1 (Apr. 30, 2003).

2. The Petitioner-taxpayer in this matter has carried the burden of proof with respect to the issue of waiver of additions to tax.

### **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the withholding tax assessment issued against the Petitioner for the period of January 1, 2001, through September 30, 2001, shall be and is hereby **AFFIRMED** as to the **tax**, and **interest** for a **total** liability; the **ADDITIONS** to tax are, however, **VACATED** in full.

Because the Petitioner has previously remitted the assessed tax liability, **only** the interest **remains due** to the State Tax Commissioner of West Virginia.