

**SANITIZED DEC. 04-675 P – BY GEORGE V. PIPER – SUBMITTED FOR
DECISION 03/08/05 - ISSUED 03/11/05**

SYNOPSIS

PERSONAL INCOME TAX -- BURDEN OF PROOF MET -- Although Petitioner did not appear at hearing in support of his petition for reassessment, written documentation supplied prior thereto significantly reduced the assessment except for a small amount of interest and additions to tax which still applied because of late payment.

FINAL DECISION

The Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued a personal income 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 year 2001, for tax, interest, through November 22, 2004, and additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked October 11, 2004, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. *See* W. Va. Code § 11-10A-8(1) [2002].

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 his petition for reassessment Petitioner stated that he never received from his employer a W-2 form for tax year 2001; however, the enclosed pay stubs allowed the Division to begin the process to locate same. Petitioner had previously remitted an amount to cover what he considered to be the remaining portion of the assessment.

2. Ultimately the Division found the missing W-2 and applied said withholdings to the tax assessment, leaving a small amount due and owing for interest and additions, because the aforementioned amount was paid some two (2) years late.

DISCUSSION

The only issue is whether the Petitioner has shown the assessment is incorrect and contrary to law, in whole or in part.

In this instance Petitioner did, by submitting certain tax documents, prove that a significant portion of the assessment was indeed incorrect and the assessment has been so revised.

CONCLUSIONS OF LAW

Based upon all of the above it is **HELD** 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. 20, 2003).

2. The Petitioner-taxpayer in this matter has carried the burden of proof with respect to the issue of whether his tax withholdings had been properly credited by the Division. *See* 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

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 for the year 2001, should be and is hereby **MODIFIED** in accordance with the above Conclusions of Law for **revised** tax, interest, and additions to tax, for a **total revised** liability.