

**SANITIZED DEC. 04-770 P – BY GEORGE V. PIPER – SUBMITTED FOR
DECISION 03/08/05 - ISSUED 03/10/05**

SYNOPSIS

PERSONAL INCOME TAX – BURDEN OF PROOF NOT MET – Failure of the Petitioner to prove, by submitting a Virginia personal income tax return, that he had indeed received non-wage taxable income for the tax year in question mandates that the assessment be upheld *in toto*. W. Va. Code § 11-21-40.

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 2003, for tax, interest, through November 30, 2004, and additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked December 13, 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 2003 West Virginia resident income tax return Petitioner reflected that he was entitled to a credit for income tax paid to another state.

2. Because Petitioner never supplied a copy of the other state's resident income tax return for the tax year 2003, the Division issued the aforesaid tax assessment.

3. The only mechanism by which Petitioner could have legally been entitled to a credit of income taxes paid to the other state would be if the same constituted non-wage income. W. Va. Code § 11-21-40.

DISCUSSION

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

Because Petitioner never supplied proof that he paid income taxes in another state for tax year 2003, and that the same were derived from non-wage income, the West Virginia resident income tax return for 2003 remains invalid.

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 failed to carry the burden of proof with respect to the issue of whether he is entitled to a tax credit for income taxes paid to another state. *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 2003 for tax, interest, and additions to tax, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002], **interest accrues** on this personal tax assessment until this liability is fully paid.