

**REDACTED DECISION -- 06-741 P -- BY GEORGE V. PIPER, ALJ --
SUMBMITTED for DECISION on MARCH 2, 2007 -- ISSUED on MARCH 8, 2007**

SYNOPSIS

PERSONAL INCOME TAX -- BURDEN OF PROOF MET FOR VACATING TAX ASSESSMENT -- Tax portion of the assessment will be vacated where Petitioner in its petition for reassessment submits documentation that the tax has been paid and Respondent acknowledges same in subsequent correspondence to this tribunal.

FINAL DECISION

On October 4, 2006, the Accounts Monitoring Unit of the Internal Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) issued a West Virginia 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 2005, for tax of \$, interest, through October 4, 2006, of \$, and additions to tax of \$, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioner as required by law.

Thereafter, by facsimile transmission dated December 14, 2006, 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] and 11-10A-9(a)-(b) [2005].

In due course, the presiding administrative law judge contacted the parties and advised them that the matter was to be submitted for decision on documents only, in lieu of holding a hearing in person, because he determined that their appearances in person were not necessary in order to render a decision on the merits (no need for testimony).

Specific documentation on the merits was submitted by the required due date which explicitly showed that the tax portion of the assessment had indeed been paid after the due date.

FINDINGS OF FACT

1. In her petition for reassessment, Petitioner stated that she did not owe the tax portion of the assessment because she had paid same on October 18, 2006.
2. By fax Respondent subsequently acknowledged that the tax portion of the assessment had been paid.

DISCUSSION

The only issue is whether the Petitioner has shown that the tax portion of the assessment has been paid.

In this instance, Petitioner's statement in its petition for reassessment that the taxes in question were paid has been verified as being correct by Respondent.

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 W. Va. Code St. R. § 121-1-63.1 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has carried the burden of proof with respect to her contention that, based upon the undisputed evidence, the tax portion of the personal income tax liability for tax year 2005 has been paid (albeit late). *See* W. Va. Code St. R. § 121-1-69.2 (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 again the Petitioner for the tax year 2005, for tax of \$, interest of \$, and additions to tax of \$, totaling \$, should be and is hereby **AFFIRMED**. Because the tax portion of the assessment has been paid, only the interest and additions to tax remain due and owing to Respondent.