

**REDACTED DECISION -- 06-774 P -- BY GEORGE V. PIPER, ALJ -- SUBMITTED for
DECISION on OCTOBER 10, 2007 -- ISSUED on NOVEMBER 1, 2007**

SYNOPSIS

**PERSONAL INCOME TAX - - BURDEN OF PROOF NOT MET FOR
VACATING ASSESSMENT** -- Because Petitioner did not appear at hearing or otherwise prove that he was not legally required to file a West Virginia resident income tax return for tax year 2005, he has failed to carry the burden of proof required of him, thereby mandating that the assessment be upheld *in toto*. See W. Va. Code §§ 121-1-63.1 and 69.2 (April 20, 2003).

FINAL DECISION

On November 1, 2006, the Accounts Monitoring Unit of the Internal Auditing “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 November 1, 2006, of _____, additions to tax of _____, and an estimated tax penalty of _____, for a total assessed liability of _____. Written notice of this assessment was served on the Petitioner as required by law.

Thereafter, by mail postmarked December 12, 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].

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 W. Va. Code St. R. § 121-1-69.1 (Apr. 20, 2003)

FINDINGS OF FACT

1. On April 14, 2006, Petitioner filed a West Virginia resident income tax return for the tax year 2005, listing his home address as a city in Virginia, which reflected a specific amount of West Virginia income tax having been withheld, as well as a credit for income tax paid to another state, resulting in a refund allegedly due to the Petitioner for the tax year 2005.

2. In his petition for reassessment, Petitioner claimed that he had been, since 2004, a resident of the Commonwealth of Virginia, having left the State of West Virginia in 1992. He further stated that it was his understanding that he could still claim status as a West Virginia resident, because his family has a home located in West Virginia. He was later informed by a tax attorney that the Petitioner, in his opinion, had legally established residency in Virginia, because he had both worked and resided there for more than 150 days during calendar year 2005.

3. Petitioner attached to his petition for reassessment a copy of his Virginia driver's license and a lease agreement which reflected that he was residing in Virginia during 2005.

4. During the course of the administrative hearing, Respondent's counsel discovered in his file a copy of an electronically filed Virginia personal income tax return for the same tax year 2005 which was also dated April 14, 2006 and was signed by the Petitioner.

DISCUSSION

The only issue is whether the Petitioner has shown that the assessment is erroneous or otherwise invalid.

It is clear from Petitioner's 2005 West Virginia personal income tax return that petitioner was seeking a refund as a West Virginia resident, while at the same time in his petition for reassessment he proclaims that he is a resident of the Commonwealth of Virginia.

Because Petitioner never appeared at the hearing to explain why he filed a West Virginia return and also what purports to be a Virginia resident return for the same tax year, we are left with no alternative but to hold for Respondent, because Petitioner filed a West Virginia resident income tax return for 2005 which, when properly corrected by Respondent, reflected tax due and owing the State of West Virginia for that year.

Although Petitioner did not carry his burden of proof in this matter, we suggest that Petitioner contact Respondent upon receipt of this decision to explain the inconsistency that resulted when he filed resident returns for two different states for the same year.

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 failed to carry the burden of proof with respect to his contention that he does not owe the personal income tax assessment for tax year 2005. *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 West Virginia personal income tax assessment issued against the Petitioner for the year 2005, for tax of \$_____, interest of \$_____, additions to tax of \$_____, and an estimated tax penalty of \$_____, **totaling** \$_____, should be and is hereby **AFFIRMED**.

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