

FILED

2003 SEP 11 P 12:34

SYNOPSIS

PERSONAL INCOME TAX – BURDEN OF PROOF NOT MET – Failure by the Petitioner to appear or otherwise show that the assessment is incorrect contrary to law, in whole or in part, as required by W. Va. Code § 11-10A-10(e), mandates that the same be upheld.

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

FINAL DECISION

The Unit Manager of the Accounts Monitoring Unit issued a personal income tax assessment against the Petitioner.

This assessment was for the year 2001, for tax, interest, through December 2, 2002, and additions to tax.

Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked February 20, 2003, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment.

A hearing on the petition was scheduled, and the Petitioner received notice of the hearing. After waiting for about fifteen (15) minutes after the scheduled starting time for the hearing, this tribunal noted that no one had appeared on behalf of the Petitioner when the hearing was convened. The hearing was held, however, without an appearance on behalf of the Petitioner, in accordance with the provisions of W. Va. Code § 11-10A-10(a).

FINDINGS OF FACT

1. In his petition for reassessment Petitioner stated that he was on a payment plan and would pay the remainder of the tax debt within sixty (60) days.

2. In due course Petitioner was informed that to avoid a hearing he must withdraw his petition for reassessment; however, he never did so.
3. Any and all payments made by the Petitioner have been applied against the tax assessment.

DISCUSSION

The sole issue is whether the Petitioner has shown that the assessment is incorrect and contrary to law, in whole or in part, as required by W. Va. Code § 11-10A-10(e).

In this case, Petitioner has clearly admitted by his correspondence that he owes same and is seeking to pay off his debt.

CONCLUSION(S) 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 the 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).
2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to liability, except for certain payments.

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 Conclusion(s) of Law for tax, interest, on the revised tax, updated through August 15, 2003, and additions to tax, for a total revised liability.