

SYNOPSIS

2003 NOV 14 P 3: 11

PERSONAL INCOME TAX – BURDEN OF PROOF NOT MET – Petitioner's attempt to prove that his West Virginia personal income taxes for the year 1999 were paid as evidenced by a Virginia W-2 is unpersuasive, given the fact that no West Virginia income tax return for that year was ever filed nor was a West Virginia W-2 for that year ever received.

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 for the year 1999, for tax, interest, through April 29, 2003 and additions to tax, for a total assessed liability.

Thereafter, by mail postmarked, May 6, 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) and 121 C.S.R. 1, § 69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. Petitioner never filed a West Virginia personal income tax return for the year 1999.
2. Petitioner's taxable income for 1999 was based upon his 1999 federal income tax return.
3. Petitioner submitted with his petition for reassessment a W-2 for another state, not the State of West Virginia.

DISCUSSION

The sole issue is whether the Petitioner has shown that the assessment is incorrect, in whole or in part, and contrary to law, as required by W. Va. Code § 11-10A-10(e) and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

In a fax to Commissioner's counsel dated July 2, 2003, Petitioner continues to argue that his out-of-state W-2 is a West Virginia W-2; however, it is clear that his proof is lacking given the fact that the W-2 on its face says it is for the other state. Also, Petitioner has never filed a personal income tax return for that same year for the State of West Virginia.

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) 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 this issue. 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 1999 for tax, interest, updated through October 15, 2003, and additions to tax, should be and is hereby **AFFIRMED**.