

SYNOPSIS

PERSONAL INCOME TAX -- LIMITED EXCLUSION FOR PERMANENT AND TOTAL DISABILITY PAY -- FAILURE TO PROVE PROPER CERTIFICATION

-- The West Virginia Office of Tax Appeals will affirm the State Tax Commissioner's disallowance of a claimed exclusion from federal adjusted gross income, for West Virginia personal income tax purposes, of pay for an alleged permanent and total disability, when the taxpayer fails to comply with (1) W. Va. Code § 11-21-12(c)(8) [2000, 2002], (2) the implementing legislative regulation set forth in 110 C.S.R. 21, § 12.3.6 (June 23, 1989), and (3) the instructions for the applicable West Virginia personal income tax return, all of which require proof that a "proper [medical] authority" had "certified" that the taxpayer had such a disability for the tax period involved in the matter, such as by filing with the West Virginia personal income tax return a properly completed "Schedule 'H'" signed by a qualified physician.

FINAL DECISION

The Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued a West Virginia personal income tax assessment against the Petitioners, husband and wife. The assessment was for the calendar and tax year of 2000, for tax, interest, and no additions to tax. Written notice of this assessment was served on the Petitioners.

Thereafter, the Petitioners 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 Petitioners -- at their last known mailing address, that is, their mailing address set forth in their petition -- in accordance with the provisions of W. Va. Code § 11-10A-10(a) [2002] and 121 C.S.R. 1, § 61.3.3 (Apr. 20, 2003). See also 121 C.S.R. 1, § 24.5 (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. For the year 2000 the Petitioners timely filed a joint West Virginia resident personal income tax--"long form" return, and, among other things, attached to the return a blank Schedule "H," containing only the husband's name and social security number at the outset, but without being completed or signed by a qualified physician, as clearly required by that schedule itself, in order to be entitled to an exclusion of pay for a permanent and total disability.

2. In their petition the Petitioners state that the husband has not worked since September 06, 1999 due to an alleged permanent and total disability and that the pay received from the former employer was mistakenly included in federal adjusted gross income as an ordinary retirement distribution.

DISCUSSION

The only issue is whether the Petitioners have shown their entitlement to the limited exclusion of pay received for a permanent and total disability.

The first \$8,000.00 of permanent and total disability pay each year per recipient is, generally, excludable from West Virginia taxable income, as long as the taxpayer proves that he or she had been "certified by proper [medical] authority as permanently and totally disabled" for the year in question. W. Va. Code § 11-21-12(c)(8) [2000, 2002] and 110 C.S..R. 21, § 12.3.6 (June 23, 1989).

CONCLUSIONS OF LAW

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) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

2. The Petitioners-taxpayers in this matter have failed to carry the burden of proof with respect to the factual issue of whether the husband had been certified by a proper medical authority as permanently and totally disabled for the year 2000.

3. The West Virginia Office of Tax Appeals will affirm the State Tax Commissioner's disallowance of a claimed exclusion from federal adjusted gross income, for West Virginia personal income tax purposes, of pay for an alleged permanent and total disability, when the taxpayer fails, as here, to comply with (1) W. Va. Code § 11-21-12(c)(8) [2000, 2002], (2) the implementing legislative regulation set forth in 110 C.S.R. 21, § 12.3.6 (June 23, 1989), and (3) the instructions for the applicable West Virginia personal income tax return, all of which require proof that a "proper [medical] authority" had "certified" that the taxpayer had such a disability for the tax period involved in the matter, such as by filing with the West Virginia personal income tax return a properly completed "Schedule 'H'" signed by a qualified physician.

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 Petitioners for the year 2000, for tax, and interest, **updated** through September 30, 2003, should be and is hereby **AFFIRMED**.