

SYNOPSIS

SANCTIONS FOR FAILURE TO APPEAR AT PREHEARING CONFERENCE -- Petitioner's refusal or failure to appear at a scheduled prehearing conference upon notice thereof, pursuant to 121 C.S.R., 1 § 49.1 *et seq.* (Apr. 20, 2003), may result in entry of an order of default against the Petitioner, as more fully set forth in 121 C.S.R. 1, §§ 49.9 and 54 (Apr. 20, 2003), and may result in dismissal of Petitioner's petition for reassessment for failure to prosecute, pursuant to 121 C.S.R. 1, § 54.2 (Apr. 20, 2003).

**FINAL ORDER DISMISSING THE PETITION FOR REASSESSMENT AND
AFFIRMING THE ASSESSMENTS AGAINST THE PETITIONER**

The Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued a withholding tax assessment against the Petitioner. The assessment was as follows:

A withholding tax assessment covering the period January 1, 2001, through December 31, 2001, for tax, interest through February 15, 2004, and additions to tax, for a total assessed liability.

The assessment was issued pursuant to the authorization of the Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. Written notice of this assessment was served on the Petitioner.

Thereafter, 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]. The petition for reassessment was received on April 5, 2004.

By letter dated April 26, 2004, the parties were notified that the prehearing conference required by 121 C.S.R. 1, § 49.1 was scheduled for June 3, 2004, at 9:30 a.m.* The Petitioner was served with statutory notice of the prehearing conference, by means of certified mail, return receipt requested. The Petitioner personally received notice on May 1, 2004, as evidenced by the PS Form 3811, Domestic Return Receipt (the “Green Card”).

On May 28, 2004, the State Tax Commissioner, by counsel, filed her required prehearing statement with this Office, serving copies of the same on the Petitioner. In her prehearing statement, the Commissioner stated that the assessment was because Petitioner had failed to remit withholding tax records. The Petitioner did not file a prehearing statement.

On June 3, 2004, at approximately 9:30 a.m., the State Tax Commissioner appeared, by counsel. The Petitioner did not appear at that time. After allowing the Petitioner fifteen (15) minutes to appear, the prehearing conference commenced at approximately 9:45 a.m., without any appearance by or on behalf of the Petitioner. Upon commencement of the prehearing conference, counsel for the Commissioner moved for dismissal of the petition for reassessment.

121 C.S.R. § 4. provides, in relevant part:

49.1. *Required.* – Except in small claim cases and except as otherwise ordered by the presiding administrative law judge, a prehearing conference shall be held in all proceedings before the office of tax appeals.

49.2. *Filing of prehearing statement.* – Not less than five (5) days before the prehearing conference, each party shall exchange and file with the executive director a prehearing statement in a form determined by the office of tax appeals.

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49.9. *Failure to appear.* -- Failure to appear at a duly scheduled prehearing conference may result in the dismissal of the appeal or the scheduling of a default hearing as provided in section 54 of this rule.

* In the same document, the parties were also notified that the evidentiary hearing in this matter was scheduled for July 1, 2004.

In this matter, the Petitioner failed to file the required prehearing statement. It neither asked for nor was granted a continuance of the prehearing conference. It failed to appear at the date and time of the scheduled prehearing conference, despite being served with statutory notice of that conference. Other than filing the petition for reassessment, the Petitioner's participation in the hearing process has been nil. Accordingly, because the Petitioner failed to file a prehearing statement and to attend the required prehearing conference, and because it has otherwise failed to participate in the hearing process, the Commissioner's motion to dismiss is **GRANTED**.

DISPOSITION

WHEREFORE, it is the **FINAL ORDER** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that, because the Petitioner failed to file a prehearing statement and to appear at the scheduled, mandatory prehearing conference, the petition for reassessment filed by the Petitioner should be and is hereby **DISMISSED**, and the assessment issued by the State Tax Commissioner should be and is hereby **AFFIRMED**.