

SYNOPSIS

PERSONAL INCOME TAX - TAXPAYER'S FAILURE TO CARRY BURDEN OF PROOF -- The failure of a taxpayer to articulate adequate grounds in his petition for reassessment justifying his claim, combined with his failure to appear at a hearing and to present any evidence respecting his claim, will result in a denial of relief to the taxpayer. *See* W. Va. Code § 11-10A-10(e) [2002]; 121 C.S.R. 1, §§ 63.1 and 69.2 (Apr. 20, 2003).

FINAL DECISION

On September 10, 2004, the Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued an assessment for personal income tax 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 2001, for tax, interest, and additions to tax, for a total assessed tax liability of \$. Written notice of this assessment was served on the Petitioner.

Thereafter, the Petitioner timely filed a petition for reassessment which was received by the State Tax Commissioner on November 3, 2004. The State Tax Commissioner forwarded the petition for reassessment to the offices of this tribunal, the West Virginia Office of Tax Appeals, where it was received on November 4, 2004. Although it was not apparent from the petition for reassessment, the Petitioner fully paid the amount of the tax, interest, and additions to tax assessed by the State Tax Commissioner.

At the time scheduled for convening the evidentiary hearing, there was no appearance on behalf of the Petitioner. The evidentiary 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) [2002] and 121 C.S.R. 1, § 69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. In their petition for reassessment, the Petitioner made no substantive assertions respecting the assessment of tax, interest, or additions to tax.
2. The petition for reassessment contains no grounds to show that the assessment is erroneous, unlawful, void or otherwise invalid.
3. With the petition for reassessment, the Petitioner paid the entire amount of the assessment.
4. The Petitioner was provided with notice that he was required to appear at the evidentiary hearing and present evidence respecting the reasons he believed that the assessment was erroneous, unlawful, void, or otherwise invalid.
5. The Petitioner did not appear at the time and place of the hearing and presented no evidence respecting any of his allegations.
6. At the hearing, counsel for the State Tax Commissioner represented that he had spoken with the Petitioner, and that the Petitioner believed it was necessary to file the form petition for reassessment in order to pay the assessment.

CONCLUSIONS 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 to show that any assessment of tax against him is erroneous, unlawful, void, or otherwise invalid. *See* W. Va. Code § 11-10A-10(e) [2002]; 121 C.S.R. 1, §§ 63.1 and 69.2 (Apr. 20, 2003).

2. The Petitioner in this matter has failed to carry his burden of proving that any assessment of taxes against him is erroneous, unlawful, void, or otherwise invalid.

3. It does not appear that it was the actual intention of the Petitioner to challenge the assessment.

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, totaling \$, should be and is hereby **AFFIRMED**.

The Petitioner, having paid the entire assessment, owes nothing further to the State Tax Commissioner for personal income tax for the tax year 2001.