

**REDACTED DECISION -- 06-332 P, 06-333 P, 06-334 P, 06-335 P, 06-336 P, and 06-337 P
-- BY GEORGE V. PIPER, ALJ -- SUBMITTED for DECISION on SEPTEMBER 20,
2007 -- ISSUED on SEPTEMBER 29, 2007**

SYNOPSIS

PERSONAL INCOME TAX -- ADDITIONS TO TAX -- REASONABLE CAUSE NOT SHOWN FOR WAIVER OF ADDITIONS TO TAX-- Failure by Petitioners to timely file West Virginia personal income tax returns for a period of six (6) years was not due to reasonable cause but rather constituted willful neglect and, therefore, no grounds were shown for waiver of additions to tax. W.Va. Code § 11-10-18(a) (1)-(2) [1986, 2006].

PERSONAL INCOME TAX -- ADDITIONS TO TAX FOR UNDERPAYMENT OF ESTIMATED INCOME TAX -- REASONABLE GROUNDS NOT SHOWN FOR WAIVER OF ADDITIONS TO TAX -- Imposition of the additions to tax (sometimes referred to as an underpayment “penalty”) for Petitioners’ failure to pay West Virginia estimated personal income taxes for five (5) years will not be waived because no showing was made that by reason of casualty, disaster, or other unusual circumstances the imposition of such additions to tax would be against equity and good conscience. W. Va. Code § 11-10-18a (e) (3) (first enacted in 1993).

FINAL DECISION

On March 30, 2006, the Accounts Monitoring Unit of the Internal Auditing “Division” of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) issued six (6) personal income tax assessments against the Petitioners. These assessments were issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Article 10 and 21 of the West Virginia Code. The assessments were for the years 1999, 2000, 2001, 2002, 2003 and 2004, for combined tax of \$_____, combined interest through March 30, 2006 of \$_____, combined additions to tax of \$_____, and combined estimated tax penalty of \$_____, for a combined total assessed liability of \$_____. Written notice of this assessment was served on the Petitioners as required by law.

Thereafter, by mail postmarked May 26, 2006, 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] and 11-10A-9 (a)-(b) [2005].

Subsequently, notice of a hearing on the petition was sent to the parties in accordance with the provisions of W.Va. Code § 11-10A-10 [2002] and W. Va. Code St. R § 121-1-61.3.3 (April 20, 2003).

Prior to the time of the scheduled hearing, Petitioners' counsel contacted this tribunal and informed the same that Petitioners had chosen not to attend the hearing and agreed that a decision should be rendered solely upon the documents in the tribunal's hearing file. In due course Respondent's counsel agreed to this request.

FINDINGS OF FACT

1. Petitioners failed to timely file personal income tax returns for tax years 1999, 2000, 2001, 2002, 2003 and 2004.
2. Although Petitioners alleged generally in their petition for reassessment that they had reasonable cause for failing to timely file and pay the proper amount of personal income tax due during the years in question, the Petitioners never offered any evidence and specific argument to support any finding of grounds for waiver of either the regular additions to tax or the additions to tax pertaining to the underpayment of West Virginia estimated personal income tax.

DISCUSSION

The only issue is whether the Petitioners have shown grounds for waiver of the additions to tax pertaining to either (1) the failure to timely file West Virginia personal income tax returns

and to pay the applicable taxes thereon, or to (2) the underpayment of West Virginia estimated personal income taxes.

W.Va. Code § 11-10-18(a) (1) (2) provides that regular additions to tax for failure to file a required tax return or to pay the amount of tax due may be waived if a showing is made that the failure to do so resulted from reasonable cause and was not due to willful neglect.

Additionally, W. Va. Code § 11-10-18a (e) (3) provides that the additions to tax for the underpayment of West Virginia estimated personal income tax may be waived if, by reason of casualty, disaster or other unusual circumstances, the imposition of same would be against equity and good conscience.

In this case, Petitioners has offered no explanation at all for their repeated failure to timely file the required returns, timely pay taxes owed, or to pay the required amount of estimated personal income taxes. Accordingly, having failed to prove any part of their cases, both types of additions to tax shall be upheld *in toto*.

CONCLUSIONS OF LAW

Based upon all of the above it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon a 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 W. Va. Code St. R. § 121-1-63.1 (Apr. 20, 2003).

2. The Petitioners-taxpayers in this matter have failed to carry the burden of proof with respect to their contention that grounds were shown for waiver of either type of additions to tax. *See* W. Va. Code St. R. § 121-1-69.2 (Apr. 20, 2003).

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessments issued against the Petitioners for the tax years 1999, 2000, 2001, 2002, 2003 and 2004, for combined tax of \$_____, combined interest of \$_____, combined additions to tax of \$_____ and combined estimated tax penalty of \$_____, totaling \$_____, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002], **interest continues to accrue** on these personal income tax assessments until this liability is fully paid.