

**REDACTED DECISION -- 07-381 P -- BY R. MICHAEL REED, CHIEF ALJ --
SUBMITTED for DECISION on July 02, 2008 -- ISSUED on JULY 15, 2008**

SYNOPSIS

**PERSONAL INCOME TAX -- FEDERAL AND WEST VIRGINIA
ADJUSTED GROSS INCOME -- DETERMINED EXCLUSIVELY BY
COMPETENT FEDERAL AUTHORITIES** -- Only the Internal Revenue Service and
other competent federal authorities have the authority to determine, under federal law,
any component of federal, and thereby, West Virginia, adjusted gross income;
accordingly, the West Virginia State Tax Commissioner and the West Virginia Office of
Tax Appeals lack the authority to determine any component of such income prior to a
final determination by a competent federal authority. *See* W. Va. Code §§ 11-21-12(a)
[2002, 2006] and 11-21-59 [1961]; Synopsis Points 2-4, W. Va. OTA's Final Decision in
Docket No. 05-431 P (July 20, 2006).

FINAL ORDER GRANTING PETITIONER'S MOTION TO DISMISS THE PERSONAL INCOME TAX ASSESSMENT FOR LACK OF SUBJECT-MATTER JURISDICTION

After a thorough review of the record in this matter, including the briefs of the
parties on the preliminary issue addressed herein, this tribunal does hereby enter this
FINAL ORDER GRANTING PETITIONER'S MOTION to DISMISS the West
Virginia personal income tax **ASSESSMENT for LACK of SUBJECT-MATTER
JURISDICTION**, for the only year remaining in controversy, namely the calendar and

tax year 2003. This tribunal holds that only the Internal Revenue Service and other competent federal authorities have the authority to determine, under federal law, any component of federal, and thereby, West Virginia, adjusted gross income; accordingly, the West Virginia State Tax Commissioner and the West Virginia Office of Tax Appeals lack the authority to determine any component of such income prior to a final determination by a competent federal authority. *See* W. Va. Code §§ 11-21-12(a) [2002, 2006] and 11-21-59 [1961]; Synopsis Points 2-4, W. Va. OTA's Final Decision in Docket No. 05-431 P (July 20, 2006), *published at* "Redacted Decisions" segment of <http://www.wvota.gov>. Stated alternatively, the Respondent West Virginia State Tax Commissioner's personal income tax assessment in this matter for the year 2003 is premature and void because it is not based upon a final determination by the Internal Revenue Service or by another competent federal authority to the effect that "excess" contributions to a certain retirement plan had been made by or for the Petitioner for that year, resulting in a greater federal adjusted gross income than reported by the Petitioner; determination of that point, involving not only federal income tax law but also the Federal Employee Retirement Income Security Act, is one which is within the exclusive jurisdiction of the Internal Revenue Service (and other competent federal tax authorities) and the United States Department of Labor.

The Respondent has conceded recently that he is barred from enforcement for the years 2000, 2001, and 2002 by the applicable statute of limitation.

This tribunal notes the objection of the Respondent to this Final Order.

The Executive Director of this tribunal is to serve a copy of this Final Order upon counsel of record by certified mail.