

**REDACTED DECISION – DOCKET # 08-241 P – BY GEORGE V. PIPER, ALJ –
SUBMITTED FOR DECISION on JULY 21, 2009 – ISSUED on JANUARY 8, 2010.**

SYNOPSIS

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

FINAL DECISION

On September 22, 2008, the Accounts Monitoring Unit of the Internal Auditing Division of the West Virginia State Tax Commissioner’s Office (Commissioner) issued a personal income tax assessment against the petitioners. 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 period January 1, 2007 through December 31, 2007, for tax in the amount of \$____, interest in the amount of \$____, and additions to tax in the amount of \$____, for a total assessed liability of \$____. Written notice of this assessment was served on the petitioners as required by law.

Thereafter, by mail postmarked October 27, 2008, received in the offices of this tribunal, the West Virginia Office of Tax Appeals, on October 29, 2008, the petitioners timely filed a petition for reassessment. W. Va. Code §§ 11-10A-8(1) [2007] and 11-10A-9 [2005].

Days prior to the holding of the evidentiary hearing the petitioners contacted this tribunal by telephone stating that they were planning to withdraw their petition for reassessment to avoid having to appear at the hearing or that they might appear in person at the hearing to formally

withdraw the petition for reassessment. To date, the petitioners have not withdrawn their petition for reassessment.

At the time scheduled for convening the evidentiary hearing, there was no appearance on behalf of the petitioners. The evidentiary hearing was conducted, however, without an appearance on behalf of the petitioners, in accordance with the provisions of W. Va. Code § 11-10A-10(a) [2002] and W. Va. Code. St. R. § 121-1-69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. In their petition for reassessment, the petitioners asserted that they were actually entitled to a refund in the amount of \$_____ because of certain tax payments for which they were not properly credited.

2. In the absence of supporting evidence, the grounds articulated by the petitioners are inadequate to show that the assessment is erroneous, unlawful, void or otherwise invalid.

3. The petitioners were provided with notice that they were required to appear at the evidentiary hearing and present evidence respecting the reasons they believed that the assessment was erroneous, unlawful, and void or otherwise invalid.

4. The petitioners did not appear at the time and place of the hearing and presented no evidence respecting any of their allegations.

5. The respondent appeared, by counsel, and presented sufficient evidence to show that the personal income tax assessment was correct.

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

2. The petitioners in this matter have failed to carry their burden of proving that the assessment of taxes against them is erroneous, unlawful, void or otherwise invalid.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income assessment issued against the petitioners for the period January 1, 2007 through December 31, 2007, for tax in the amount of \$____, interest in the amount of \$____, and additions to tax in the amount of \$____, totaling \$____, should be and is hereby **AFFIRMED**.

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