

REDACTED DECISION – DOCKET #09-094 P – BY GEORGE V. PIPER, ALJ – SUBMITTED FOR DECISION on OCTOBER 6, 2009 – ISSUED on FEBRUARY 23, 2010.

SYNOPSIS

PERSONAL INCOME TAX -- BURDEN OF PROOF -- 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 against him 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).

PERSONAL INCOME TAX -- TAXPAYERS' 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 this 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 January 20, 2009, a Tax Unit Supervisor of the Compliance Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) 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 year 2006, for tax in the amount of \$____, interest in the amount of \$____, computed through the date of the assessment and additions to tax of \$____, for a total assessed tax liability of \$____. Written notice of this assessment was served on the petitioners as required by law.

Thereafter, by mail postmarked March 17, 2009, the petitioners timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. W.Va. Code §§ 11-10A-8(1) [2007] and 11-10A-9 [2005].

At the time scheduled for convening the evidentiary hearing, there was no appearance on behalf of the petitioners. The evidentiary hearing was held, 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. As a result of the federal tape match program it was revealed that petitioners had not filed a 2006 West Virginia resident personal income tax return.
2. The assessment issued to Petitioners reflects the amount of gross income reported on their federal tax return.
3. In their petition for reassessment Petitioners asserted that they filed the 2006 West Virginia resident personal income tax return on April 15, 2007 and that all taxes were paid.
4. Respondent tried on numerous occasions to resolve this matter with Petitioners but Petitioners were uncooperative.
5. Respondent's counsel asserts that Petitioners' tax filing does not reflect any payment of state income tax for tax year 2006.
6. 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.
7. Petitioners did not appear at the time and place of the hearing and presented no evidence respecting any of their allegations.

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 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]; 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 any 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 tax assessment issued against the Petitioners for the year 2006, for tax in the amount of \$____, interest in the amount of \$____ and additions to tax in the amount of \$____, for a total assessed tax liability of \$____ 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.