

REDACTED DECISION – DOCKET #09-132 P– BY GEORGE V. PIPER – 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 her 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 taxpayer to articulate adequate grounds in her petition for reassessment justifying her claim, combined with this failure to appear at a hearing and to present any evidence respecting her claim, will result in a denial of relief to the taxpayer. *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 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 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 Petitioner as required by law.

Thereafter, by mail postmarked April 15, 2009, Petitioner 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 Petitioner. The evidentiary hearing was held, however, without an appearance on

behalf of Petitioner, 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 Petitioner had not filed a 2006 West Virginia resident personal income tax return.
2. The assessment issued to Petitioner reflects the amount of gross income reported on her federal tax return.
3. In her petition for reassessment Petitioner asserted that she did not understand what was being required.
4. Respondent tried on numerous occasions to resolve this matter with Petitioner but Petitioner was uncooperative.
5. Respondent's counsel asserts that Petitioner's tax filing does not reflect any payment of state income tax for the year 2006.
6. Petitioner was provided with notice that she was required to appear at the evidentiary hearing and present evidence respecting the reasons she believed that the assessment was erroneous, unlawful, and void or otherwise invalid.
7. Petitioner did not appear at the time and place of the hearing and presented no evidence respecting any of her 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 her 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 petitioner in this matter has failed to carry her burden of proving that any assessment of taxes against her 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 Petitioner 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.