

**REDACTED DECISION – DK# 10-485 P – BY – GEORGE V. PIPER,  
ADMINISTRATIVE LAW JUDGE – SUBMITTED FOR DECISION on JUNE 14, 2011 –  
ISSUED ON OCTOBER 27, 2011**

### **SYNOPSIS**

**PERSONAL INCOME TAX – REASONABLE CAUSE SHOWN FOR WAIVER  
OF ADDITIONS TO TAX** – Reliance in good faith upon the tax advice of an outside  
accountant regarding the filing of West Virginia taxes constitutes reasonable cause for waiver of  
additions to tax pursuant to West Virginia Code Section 11-10-18(a)(1).

### **FINAL DECISION**

On November 22, 2010, the Accounts Monitoring Unit of the Internal Auditing 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 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 calendar year 2008, for interest in the amount of \$\_\_\_\_ computed through November 22, 2010 and additions to tax in the amount of \$\_\_\_\_, for a total assessed tax liability of \$\_\_\_\_. Written notice of this assessment was served on the Petitioner as required by law.

Thereafter, by mail postmarked December 15, 2010, the Petitioner timely filed with this Tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment pursuant to West Virginia Code Sections 11-10A-8(1) and 11-10A-9.

As per the telephonic conference between the parties and this Tribunal held on March 31, 2011, Petitioner and Respondent’s counsel mutually agreed to submit the matter for decision on documents only in lieu of appearing at an evidentiary hearing.

## **FINDINGS OF FACT**

### **(FROM PETITIONER'S BRIEF UNREBUTTED BY RESPONDENT)**

1. On January 6, 2008, Petitioner arrived in West Virginia to assume a temporary contract as a locums tenens employee of Corporation A. for a West Virginia hospital, which was thereafter extended through the end of the year.

2. During her employment for all of 2008, Petitioner performed duties in West Virginia as a certified registered nurse anesthetist (CRNS) for the hospital.<sup>1</sup>

3. Because Petitioner maintained a residence outside of West Virginia during 2008, her former tax preparer located in Virginia repeatedly advised Petitioner incorrectly; that she did not have to pay West Virginia personal income tax.

4. When Petitioner was advised in 2009 by her new West Virginia tax preparer that she owed taxes to the State of West Virginia for 2008, she promptly filed and paid the taxes in full.

5. Petitioner's former tax preparer was highly recommended by her employer in 2004, and Petitioner faithfully relied on that tax advice from 2004 until 2009.

## **DISCUSSION**

The sole issue is whether the Petitioner is entitled to waiver of additions to tax pursuant to West Virginia Code Section 11-10-18(a)(1), which provides in relevant part:

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<sup>1</sup> Petitioner is a U.S. officer having served 23 years in the reserves, a 2-time veteran and has had 2 deployments abroad performing anesthesia to U.S. and NATO military soldiers and their dependents.

In the case of failure to file a required return of any tax administered under this article on or before the date prescribed for filing such return...unless it is shown that such failure is due to reasonable cause and not due to willful neglect there shall be added to the amount required to be shown as tax on such return five percent of the amount of such tax...

W. Va. Code Ann. § 11-10-18(a)(1) (West 2010).

In this case, Petitioner showed that she relied in good faith on an outside tax preparer for advice regarding the filing of West Virginia personal income taxes for 2008. This Tribunal has previously ruled that such good faith reliance upon an outside tax preparer regarding the filing of West Virginia taxes constitutes reasonable cause for waiver of additions to tax pursuant to West Virginia Code Section 11-10-18(a)(1). *See* Administrative Decision; Docket No. 05-153 P.

#### CONCLUSIONS OF LAW

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

1. It is the duty of the Tax Commissioner to see that the laws concerning the assessment and collection of all taxes and levies are faithfully enforced. *See* W.Va. Code Ann. § 11-1-2 (West 2010).
2. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, wherein the Petitioner seeks waiver of additions to tax the burden of proof is upon the Petitioner to show that it is entitled to such waiver. *See* W.Va. Code Ann. § 11-10A-10(e) (West 2010); W.Va. Code R. §§ 121-1-63.1 and 69.2 (2003).
3. Reliance in good faith upon the advice of an outside tax preparer, regarding the filing of West Virginia taxes, constitutes reasonable cause for waiver of additions to tax pursuant to West Virginia Code Section 11-10-18(a)(1).

## **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 tax year 2008 for interest in the amount of \$\_\_\_\_, computed through November 22, 2010 and additions to tax in the amount of \$\_\_\_\_, for a total assessed tax liability of \$\_\_\_\_ should be and is hereby **MODIFIED** in accordance with the above conclusions of law for interest of \$\_\_\_\_, for a total liability of \$\_\_\_\_; however, the additions to tax in the amount of \$\_\_\_\_ are **VACATED** in full.