

SYNOPSIS

2003 NOV 14 P 3: 11

PERSONAL INCOME TAX – BURDEN OF PROOF NOT MET – By signing a payment plan agreement prior to hearing evidences the fact that the assessment is correct and that Petitioners have not met the burden of proof that the assessment is incorrect and contrary to law, in whole or in part, see W. Va. Code § 11-10A-10(e) and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

FINAL DECISION

The Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued a personal income tax assessment against the Petitioners.

This assessment was for the year 2001, for tax, interest, through December 2, 2002, and additions to tax, for a total assessed liability.

Thereafter, by mail, the Petitioners timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment.

A hearing on the petition was scheduled, and the Petitioners received notice of the hearing. After waiting for about twenty (20) minutes after the scheduled starting time for the hearing this tribunal noted that no one had appeared on behalf of the Petitioners when the hearing was convened. The 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) and 121 C.S.R. 1, § 69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. Because Petitioners had entered into a payment plan for 2001, they were advised by the Tax Commissioner that to avoid having to come to a hearing they must withdraw their petition for reassessment.
2. Petitioners did not withdraw their petition for reassessment prior to the hearing.
3. Prior to the hearing Petitioners had remitted a dollar amount, which was applied against the tax liability.

DISCUSSION

The sole issue is whether the Petitioners have shown that the assessment is incorrect and contrary to law, in whole or in part, as required by W. Va. Code § 11-10A-10(e).

By entering into a payment plan for the assessed amount, Petitioners have in fact admitted the validity of the assessment.

CONCLUSION(S) 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 upon the petitioner-taxpayer to show that the assessment is incorrect and contrary to law, in whole or in part. See W. Va. Code § 11-10A-10(e) and 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to this issue. See 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

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 2001 should be and is hereby **MODIFIED** in accordance with the above Conclusions of Law for tax, interest, on the revised tax, updated through October 31, 2003, and additions to tax, for a total revised liability.