

SYNOPSIS

2003 NOV 14 P 3:11
OFFICE OF THE WEST VIRGINIA
COMPTROLLER OF STATE
PERSONAL INCOME TAX -- TAXPAYERS' FAILURE TO CARRY BURDEN OF PROOF -- The failure of taxpayers to articulate any 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]; 121 C.S.R. 1, §§ 63.1 and 69.2 (Apr. 20, 2003).

FINAL DECISION

By letter dated February 21, 2003, addressed to the West Virginia State Tax Department, Internal Auditing Division, which was forwarded to this office, the West Virginia Office of Tax Appeals, and received on or about March 3, 2003, the taxpayers¹ stated, "Please consider this letter as an official appeal of income taxes the state alleges we owe. Please schedule us to meet with a local tax agent to discuss the matter." The letter was treated as a petition for reassessment.²

Subsequently, notice of a hearing on the petition was sent to the Petitioners and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10(a) [2002] and 121 C.S.R. 1, § 69.1 (Apr. 20, 2003). Neither Petitioner appeared at the hearing.

FINDINGS OF FACT

1. The Petition for Reassessment asserts no grounds upon which the West Virginia Office of Tax Appeals could possibly determine that any assessment, notice of tax due, or other assertion by the Tax Commissioner, that the Petitioners owe tax is erroneous, void, unlawful, or otherwise invalid.

¹ Although docketed as under one Petitioner's name and business name, the petition in this action was actually filed by an individual and what appears to be spouse.

² In light of the statement in the petition, that the taxpayer is seeking relief from taxes that are allegedly owed, as opposed to taxes that were erroneously collected, the petition must be one for reassessment, not one for refund.

2. The Petitioners have not presented any evidence which would tend to show that the taxes which the Tax Commissioner has assessed against them, or otherwise asserted that they owe, are not owed.

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 upon the petitioners to show that any assessment of tax against them is erroneous, unlawful, void or otherwise invalid. See W. Va. Code § 11-10A-10(e) [2002]; 121 C.S.R. 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 assessment, notice of tax due or other assertion by the Tax Commissioner that the Petitioners owe tax should be and is hereby **AFFIRMED**.