

SYNOPSIS

PERSONAL INCOME TAX – BURDEN OF PROOF NOT MET – Failure of the Petitioners to prove that the assessment is incorrect and contrary to law, in whole or in part, as required by the W. Va. Code § 11-10-9, mandates that the same be upheld in toto.

ADMINISTRATIVE DECISION

The Internal Auditing Division, issued a personal income tax assessment against the Petitioners. This assessment was for the taxable year 1998, for tax, interest, and additions to tax.

Upon receiving the assessment, the Petitioners timely filed a petition for reassessment. Subsequently, notice of a hearing was furnished to the Petitioners. There was no appearance on behalf of the Petitioners when the hearing was convened. The hearing was held, however, in accordance with the provisions of W. Va. Code § 11-10-9.

FACTS

In December 2000, the Petitioners jointly filed a West Virginia amended resident income tax return for the year 1998 but lacking any remittance.

In their petition for reassessment Petitioners aver that this case involves a long running dispute with the Internal Revenue Service (“IRS”) resulting in the aforementioned tax assessment.

Petitioners were allotted additional time prior to the hearing in order to convince the IRS that its position was wrong.

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SECRETARY OF STATE

ISSUE AND DETERMINATION

The sole issue is whether the Petitioner has shown that the assessment is incorrect and contrary to law, in whole or in part, as required by W. Va. Code § 11-10-9.

Although Petitioners have alleged that the IRS' position is wrong, no evidence was ever presented at the hearing or thereafter proving same.

Accordingly, it is **DETERMINED** that the Petitioners have failed to carry the burden of proof with respect to this issue.

WHEREFORE, it is the **DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the Petitioners for the year 1998, should be and is hereby **AFFIRMED** as to the tax and interest, updated through July 31, 2002; the **ADDITIONS** to tax are, however, **WAIVED** in full.

It is further **DETERMINED** that the interest on this tax liability for the period of August 1, 2002 through the date of this Administrative Decision is **ABATED**, pursuant to the provisions of the W. Va. Code 11-10-7b(a)(2).