

**SANITIZED DECISION--DOCKET NO. 03-335 P --ROBERT W. KIEFER, JR.,  
ALJ--SUBMITTED for DECISION on JULY 06, 2005--ISSUED on JANUARY 06, 2006**

### **SYNOPSIS**

**WEST VIRGINIA TAX AMNESTY – ELIGIBILITY FOR PARTICIPATION** – To be eligible to participate in the West Virginia Tax Amnesty Program, W. Va. Code § 11-10D-1, *et seq.*, a taxpayer must dismiss any administrative proceeding pending before any administrative agency of this State, including the West Virginia Office of Tax Appeals, for nonpayment, delinquency, fraud or other event of noncompliance in relation to any of the taxes administered under the West Virginia Tax Procedures Act, W. Va. Code § 11-10-1 *et seq.* *See* W. Va. Code § 11-10D-6(b)(2).

**WEST VIRGINIA TAX AMNESTY – DISMISSAL OF PENDING PROCEEDINGS** – W. Va. Code § 11-10D-6(b)(2) prohibits a taxpayer from participating in the West Virginia Tax Amnesty Program unless he withdraws with prejudice from a proceeding before the West Virginia Office of Tax Appeals prior to the granting of amnesty, pays in full the outstanding tax liability plus fifty percent of the accrued interest thereon and otherwise cures any default which is the subject of the proceeding. *See* W. Va. Code § 11-10D-6(b)(2).

**PERSONAL INCOME TAX– REQUIREMENT TO FILE RETURNS** – Absent an application for extension of the time to file personal income tax returns and to pay the tax due, where a taxpayer is unable to determine the exact amount of his taxable income, he is required to make a good faith determination of the amount of his taxable income, file his personal income tax returns and pay the amount of tax due based on his determination. *See* W. Va. Code § 11-21-51(a)(1); W. Va. Code. St. R. §§ 110-21-57.1.1.2, 57.1.1.5 and 57.1.3 (Apr. 2, 1990).

**PERSONAL INCOME TAX– WAIVER OF ADDITIONS OF TAX FOR FAILURE TO FILE TAX RETURNS** – A taxpayer is not entitled to waiver of additions to tax for failure to file personal income tax returns where the reasons articulated by the Petitioner for his failure to file do not constitute reasonable cause for waiver of additions to tax. *See* W. Va. Code § 11-10-18(a)(1).

**PERSONAL INCOME TAX– WAIVER OF ADDITIONS OF TAX FOR FAILURE TO PAY AMOUNT SHOWN DUE ON TAX RETURNS** – A taxpayer is entitled to waiver of additions to tax assessed for his failure to pay an amount shown due on a tax return for the periods prior to the time that he filed his personal income tax return because, where no return is filed, there is no amount shown due on a tax return. *See* W. Va. Code § 11-10-18(a)(2).

**PERSONAL INCOME TAX– ASSESSMENT OF ADDITIONS OF TAX FOR FAILURE TO PAY AMOUNT SHOWN DUE ON TAX RETURNS** – Unless a taxpayer shows reasonable cause and lack of willful neglect, he is liable for payment of additions to tax for his failure to pay an amount shown due on a tax return for the periods subsequent to the time that he filed his personal income tax return because, once a return is filed, there is an amount shown due on a return. *See* W. Va. Code § 11-10-18(a)(2).

### **FINAL DECISION**

On March 26, 2003, 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 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 the period of January 1, 1999, through December 31, 2001, for tax in the amount of \$, interest in the amount of \$, computed through March 26, 2003, and additions to tax of in the amount of \$, for a total assessed tax liability of \$. The amount of the assessment was estimated by the State Tax Commissioner. Subsequently, written notice of the assessment was served on the Petitioner.

Thereafter, by hand delivery on May 27, 2003, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. *See* W. Va. Code § 11-10A-8(1) [2002].

Subsequently, notice of a prehearing conference and a hearing on the petition was sent to the Petitioner. On July 12, 2004, shortly after the prehearing conference, the Petitioner filed personal income tax returns with the State Tax Commissioner, showing his actual income and the amount due to the State. Subsequently, on July 6, 2005, a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002], solely on the issue of the Petitioner’s eligibility to participate in the Tax Amnesty Program and on the issue of whether or not the

Petitioner could show reasonable cause and the lack of willful neglect for the additions to tax to be waived.

### **FINDINGS OF FACT**

1. During the years covered by this assessment, the Petitioner was a self-employed professional person engaged in a private business.

2. For each of the years covered by the assessment, the Petitioner also had part-time employment with an agency of the State of West Virginia (“the State Agency”), for which he was paid wages and from which taxes were withheld.

3. During the tax year 2001, the Petitioner also had part-time employment with an institution of higher education within this State, for which he was paid wages and from which taxes were withheld.

4. Prior to the years covered by the assessment, the Petitioner was involved in an accident, in which he suffered serious personal injuries.

5. During the years of covered by the assessment, the Petitioner and his ex-wife were in the process of divorcing.

6. The Petitioner received a settlement which had as its purpose compensating the Petitioner and his family for their personal injuries and other losses suffered by him as a result of the accident.

7. The proceeds of the settlement were placed in an escrow account, where they accrued interest and were retained until such time as they were distributed to the Petitioner here and the members of his family.

8. Throughout the period covered by the assessment, the funds held in the escrow account were distributed to the Petitioner, the Petitioner's estranged wife and their children pursuant to the direction of the court.

9. The Petitioner testified that the court never determined what portion of the funds held in the escrow account and distributed to him, his ex-wife or their children constituted compensation for personal injuries, pain and suffering, medical expenses and other similar losses, what portion constituted compensation for lost income, and what portion constituted interest earned on the principal of the escrow account.

10. The Petitioner testified that for 1999, the difference between the amount reported on his West Virginia personal income tax return and the amount reported to him on the Form W-2, from the State Agency, totaling \$, was entirely from the proceeds of the settlement of the Petitioner's lawsuit. The Petitioner testified that his estimated lost income for that year was approximately \$. The difference between two certain amounts was interest earned on the escrow account that was attributed as income to the Petitioner.

11. The Petitioner maintains that he derived little or no net income from his private business for the years in question, that he was barely able to pay the overhead and that he was required to put funds from sources other than his private business into that business in order to pay the overhead.

12. The Petitioner maintained that it was impossible for him to determine the amount of interest that was attributable to each of the years covered by the assessment.

13. The Petitioner testified that he had no idea how much of the interest that accrued on the escrow account should be attributed as income to him.

14. The Petitioner asserts that the reason he did not file personal income tax returns for the years in question is that he was unable to determine the amount of his income for those years, due to the uncertain nature of the distributions from the escrow account.

15. The Petitioner did not file personal income tax returns for any of the tax years covered by the assessment until July 12, 2004.

16. The Petitioner did not cite any additional facts or articulate any reason why he was able to determine the amount of taxable distributions from the escrow account in 2004.

17. Other than enlisting the aid of a certified public accountant to aid him in preparing returns, there is no apparent reason why he was able to determine the amount of taxable distributions from the escrow account in 2004.

18. Based on the personal income tax returns filed by the Petitioner on July 12, 2004, the Tax Commissioner determined that, as of that date, the Petitioner owed the following amounts for the years covered by this petition: [amounts redacted]

19. The State Tax Commissioner's computation included additions to tax of 25% for the failure to file personal income tax returns for each of the years in question, since the failure to file was for more than five months for each of the years.

20. For 1999, the State Tax Commissioner assessed additions to tax of \$, based on the Petitioner's failure to pay the amount shown due on his 1999 personal income tax return filed July 12, 2004.

21. The Tax Commissioner computed additions to tax for the period between the due date of the Petitioner's 1999 personal income tax return, April 15, 2000, and the date the return was filed, July 12, 2004, a period of 51 months, including the fraction of the month between June 15, 2004 and July 12, 2004.

22. Additions to tax assessed for the 51-month period between April 15, 2000, and July 12, 2004, was the statutory maximum of 25%.

23. For 2000, the State Tax Commissioner assessed additions to tax of \$603.14, based on the Petitioner's failure to pay the amount shown due on his 2000 personal income tax return filed July 12, 2004.

24. The Tax Commissioner computed additions to tax for the period between the due date of the Petitioner's 2000 personal income tax return, April 15, 2001, and the date the return was filed, July 12, 2004, a period of 39 months, including the fraction of the month between June 15, 2004 and July 12, 2004.

25. Additions to tax assessed for the 39-month period between April 15, 2001, and July 12, 2004, was 19.5%, which is computed at .5% per month for 39 months.

26. For 2001, the State Tax Commissioner assessed additions to tax of \$, based on the Petitioner's failure to pay the amount shown due on his 2001 personal income tax return filed July 12, 2004.

27. The Tax Commissioner computed additions to tax for the period between the due date of the Petitioner's 2001 personal income tax return, April 15, 2002, and the date the return was filed, July 12, 2004, a period of 27 months, including the fraction of the month between June 15, 2004 and July 12, 2004.

28. Additions to tax assessed for the 27-month period between April 15, 2002, and July 12, 2004, was 13.5%, which is computed at .5% per month for 27 months.

## **DISCUSSION**

Petitioner's Eligibility for the Tax Amnesty Program.

The first issue is whether the Petitioner was entitled to participation in the Tax Amnesty Program. W. Va. Code § 11-10D-1, *et seq.* If the Petitioner was entitled to participate in the Tax Amnesty Program, he would be entitled to a waiver of one-half of the interest and all of the additions to tax assessed against him. The Petitioner contends that he is entitled to participate in the West Virginia Tax Amnesty Program. The State Tax Commissioner maintains that the Petitioner is not entitled to the benefit of the Tax Amnesty Program because he did not dismiss this proceeding.

West Virginia Code § 11-10D-6 provides, in relevant part:

§ 11-10D-6. Waiver of penalties; criminal immunity; exceptions and limitations.

(a) Waiver of penalty, addition to tax and interest -- For any taxpayer who meets the requirements of section seven [§ 11-10D-7] of this article and except as otherwise specifically provided in this article:

(1) Waiver -- The Tax Commissioner shall waive all penalties and additions to tax and fifty percent of the interest imposed on the late filing of a return or the late payment of any tax for which tax amnesty is granted, which is owed as a result of nonpayment, underpayment, nonreporting or underreporting of tax liabilities; . . . .

(b) Exceptions -- This section does not apply to nonpayment or underpayment of tax liabilities, or to nonreported, misreported or underreported tax liabilities for which amnesty is sought if, as of the date the taxpayer's application for amnesty is filed:

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(2) An administrative proceeding or a civil or criminal court proceeding has been initiated or is pending in any administrative agency or court of this state or of the United States for nonpayment, delinquency, fraud or other event of noncompliance in relation to any of the taxes administered under article ten [§§ 11-10-1 et seq.] of this chapter. An administrative or civil proceeding shall not be deemed to be pending if the taxpayer withdraws with prejudice from the proceeding prior to the granting of amnesty, pays in full the outstanding tax liability plus fifty percent of the accrued interest thereon and otherwise cures any default which is the subject of the proceeding.

This matter, which was filed prior to enactment of the Tax Amnesty Program, clearly constitutes an administrative proceeding pending in an administrative agency, as provided by W. Va. Code § 11-10D-6(b)(2). The pendency of this proceeding rendered the Petitioner ineligible for participation in the Tax Amnesty Program. At no time did the Petitioner dismiss this proceeding so as to render himself eligible for the benefits of the Tax Amnesty Program. Thus, the Petitioner was not entitled to the benefits of the Tax Amnesty Program.

The Petitioner sent a letter to the State Tax Commissioner dated November 11, 2004, wherein he asserted that he was eligible for and wished to avail himself of the benefits of the Tax Amnesty Program. The Tax Commissioner responded by letter dated November 23, 2004. *See* Petitioner's Exhibit No. 1. With respect to the liabilities which are the subject of this proceeding, the only reason cited for rejecting the Petitioner's application for the Tax Amnesty Program was the pendency of this proceeding.<sup>1</sup> After receipt of the Tax Commissioner's letter, the Petitioner did not undertake to dismiss this proceeding.

The Petitioner maintains that he did not undertake to dismiss this proceeding because the Tax Commissioner's letter is confusing. He also represents that a named employee of the State Tax Commissioner admitted that the letter is somewhat confusing. The Petitioner did not present any testimony by that employee of the Commissioner to support his representation.

This Office agrees that Petitioner's Exhibit No. 1 is not a model of grammatical clarity. The opening paragraph, followed by first reason given for rejecting the Petitioner's application for Tax Amnesty, does not form a complete sentence. Because the letter does not use the word "eligible" or other similar language which would make the meaning absolutely clear, it does not expressly say that a taxpayer with an administrative proceeding pending before this Office is not

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<sup>1</sup> The second reason was that taxes due on or after January 1, 2004, are not subject to the Tax Amnesty Program. The years to which this provision applies are not covered by this petition for reassessment.



eligible for Tax Amnesty. However, the letter was certainly sufficient to put the Petitioner on notice that the Tax Commissioner believed he was not eligible for the Tax Amnesty Program. The letter gave the Petitioner an indication of the Tax Commissioner's reason therefor. Upon receipt of the letter that he found confusing, the Petitioner neither directed an inquiry to the State Tax Commissioner asking for a more detailed explanation of why the Tax Commissioner believed he was not eligible for the Tax Amnesty Program nor ascertained the reason therefor on his own. The reason for his ineligibility was clearly stated in the statute. It is not so complicated that he could not have determined the reason and complied with the statute within ten (10) days.

Regardless of whether or not the letter is clear, the statute is manifestly clear. The Petitioner was not eligible for Tax Amnesty so long as this matter remained pending. The Tax Commissioner could not alter the clear meaning of the statute with his letter. This Office may not disregard the clear meaning of the statute. The Petitioner did not dismiss this proceeding. Therefore, he was not eligible to participate in the Tax Amnesty Program.

#### Waiver of Additions to Tax for Failure to File Personal Income Tax Returns.

The Petitioner also contends that good cause exists for the waiver of additions to tax. This Office is of the opinion that a distinction must be made between additions to tax assessed for the Petitioner's failure to file tax returns, which are provided for by W. Va. Code § 11-10-18(a)(1), and additions to tax assessed for failure to pay the amount shown due on a tax return, which are provided for by W. Va. Code § 11-10-18(a)(2).

During the years covered by the assessment, the Petitioner received distributions from the escrow account containing the proceeds of the settlement of the accident in which he suffered injuries. The Petitioner maintains that he was unable to calculate what portion of the distributions constituted compensation for pain and suffering, what constituted compensation for

lost income and what constituted interest earned on the escrow account. He contends that his inability to determine what portion of the escrow distributions was taxable and what was not taxable constitutes good cause for his failure to file tax returns. This Office is of the opinion that this contention is without merit.

First, the Petitioner had a statutory duty to file income tax returns for the years in question. This duty exists irrespective of his ability to make an exact determination of what portion of the escrow distributions was taxable and what portion was not taxable. *See* W. Va. Code § 11-21-51(a)(1); W. Va. Code St. R. § 110-21-31.1(1). Even if he is correct in his contention that he could not determine the portion of escrow distributions that constituted taxable income, this would not justify his failure to comply with the statutory requirement that he file returns. Under such circumstances, the Petitioner was required to either: 1) Make a good faith determination of the amount of the distributions that constituted taxable income and then file returns and pay the tax based on those determinations, subject to filing amended returns if he later concluded that his initial determination was inaccurate; or 2) To request and obtain an extension of the time to file his returns from the State Tax Commissioner, which would have required him to make a determination of the amount of tax he owed and remit that amount. *See* W. Va. Code St. R. §§ 110-21-57.1.1.2 and 57.1.1.5. Filing returns would have precluded the Tax Commissioner from assessing additions to tax for failure to file returns.<sup>2</sup> The Petitioner had no authority to unilaterally make the decision not to file his personal income tax returns.

The logic underlying the Petitioner's argument is undermined by the fact that offers no explanation of why he was unable to determine what portion of the distributions was taxable when the tax returns were due, but was able to make those determinations in 2004. There was no

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<sup>2</sup> If the Petitioner did not pay the tax shown due on the return, he might have been liable for additions to tax under W. Va. Code § 11-10-18(a)(2).

apparent change in the character of those distributions which would explain this. It is also not apparent what transpired between the due dates of the returns and the date they were filed which eliminated whatever prevented the Petitioner from making that determination. It seems likely that the calculations of the portion of the distributions that constituted income could have been made just as easily shortly after the calendar years in which the distributions occurred, prior to the time the returns were required to be filed. It is not apparent what prevented the Petitioner from making those determinations prior to the due dates of the returns.<sup>3</sup>

The Petitioner's argument is also undermined by the fact that he had wages from his part-time employment with the State Agency and, for one year, with the institution of higher learning in this State where he was employed on a part-time basis. These wages were reported to him on Forms W-2 and West Virginia income tax was withheld from his wages. This is income which the Petitioner was required to report to the State Tax Commissioner and upon which he was required to pay personal income tax. Determination of the amounts of these wages required to be shown on his West Virginia personal income tax returns required no estimation or other calculation, as was allegedly required for the payments from the escrow account.

Even if one were to assume, *arguendo*, that the Petitioner is correct that he could not determine the amount of taxable income on the distributions from the escrow account until shortly before he filed his West Virginia personal income tax returns, and that this reasoning justifies late filing, he was still required to timely file personal income tax returns if for no other reason than to report the income earned from his employment and to show proper payment of

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<sup>3</sup> The Petitioner's argument is more appropriate to a situation where a taxpayer makes a determination respecting the amount of taxable income and the tax due thereon, and pays the amount of tax he determines to be due, and then subsequently determines that he had more taxable income and owes additional tax. The issue would then be whether or not his initial determination was reasonable, based on information that was available to him at the time.

any tax due thereon. The requirement to file tax returns for this reason alone belies the Petitioner's contention that he was justified in not timely filing personal income tax returns for 1999, 2000, and 2001.

The Petitioner also maintains that the Tax Commissioner's Office previously represented that he would be granted a waiver of additions to tax. This representation was purportedly made by counsel for the State Tax Commissioner at the prehearing conference in this matter. The presiding administrative law judge was present at the time that the representation was allegedly made. The representation, as made at the prehearing conference, was that the State Tax Commissioner would consider waiving additions to tax if the Petitioner submitted evidence to the State Tax Commissioner showing that he was entitled to such a waiver and the Tax Commissioner agreed that the evidence justified the waiver of additions to tax.

#### Waiver of Additions to Tax for Failure to Pay Tax.

On July 12, 2004, the Petitioner filed tax returns for each of the years covered by this proceeding. Based upon the figures reported those returns, the Tax Commissioner computed additions to tax for the Petitioner's failure to pay at .5% for each month between the due date of the annual personal income tax return and July 12, 2004, the date on which the returns were filed and the date on which the Petitioner presumably was to pay the tax. The Commissioner determined that the Petitioner owed additions to tax of \$ for 1999, which is 25% of the tax due for the 51 months from April 15, 2000, to July 12, 2004. For 2000, she determined that the Petitioner owed additions to tax of \$, which is 19.5% of the amount of tax due for the 39 months from April 15, 2001, to July 12, 2004. For 2001, she determined that the Petitioner owed additions to tax of \$, which is 13.5% of the amount of tax due for the 27 months from April 15, 2002, to July 12, 2004.

With respect to additions to tax for failure to pay, as assessed by the Tax Commissioner in this matter, this Office is of the opinion that there is no statutory authority to assess additions to tax against the Petitioner under W. Va. Code § 11-10-18(a)(2) for periods prior to the time that the Petitioner filed his personal income tax returns. W. Va. Code § 11-10-18(a)(2) provides:

In the case of failure to pay the amount shown as tax, on any required return of any tax administered under this article on or before the date prescribed for payment of such tax (determined with regard to any extension of time for payment), 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 shown as on such return one half of one percent of the amount of such tax if the failure is for not more than one month, with an additional one half of one percent for each additional month or fraction thereof during which such failure continues, not exceeding twenty-five percent in the aggregate: . . . .

Because the Petitioner did not file his personal income tax returns until July 12, 2004, there was no “amount shown as tax, on any required return of [a] tax administered under [W. Va. Code § 11-10-1, *et seq.*]” until such date. The plain language of the statute does not permit the assessment of additions to tax against the Petitioner pursuant to W. Va. Code 11-10-18(a)(2) until such time as there is an amount shown on a tax return. The statute does not permit assessment of additions to tax on amounts that *should have been shown* as tax on a required return. The Tax Commissioner was without statutory authority to assess additions to tax pursuant to W. Va. Code § 11-10-18(a)(2) for periods prior to the date that the Petitioner filed his personal income tax returns.

For periods subsequent to July 12, 2004, the Tax Commissioner has the authority to assess additions to tax pursuant to W. Va. Code § 11-10-18(a)(2). The Petitioner having filed personal income tax returns and having failed to pay the amount of the tax as shown due on the return, the Commissioner could assess additions to tax for failure to pay the amounts shown due on the tax returns. The returns were filed on July 12, 2004. This decision is being issued on

January 6, 2006. The period of July 12, 2004, through January 6, 2006 consists of 18 months, or fraction thereof. Thus, the additions to tax for failure to pay the amounts shown due on the tax returns is 18 months x .5%, or 9%, through January 16, 2006.

Computing the additions to tax in accordance with W. Va. Code § 11-10-18(a)(2) on the amounts owed by the Petitioner, this Office determines that the Petitioner owes the following:

[amounts redacted]

Accordingly, the assessment of for additions to tax pursuant to W. Va. Code § 11-10-18(a)(2) must be reduced by \$, the difference between the amount of the additions to tax assessed by the State Tax Commissioner for periods prior to the date that the Petitioner filed his returns and the amount that accrued subsequent to the date that the Petitioner filed his returns. Additions to tax for failure to pay the amount shown due on the tax returns will continue to accrue until such time as the liability is paid or until they reach the statutory maximum of 25%.

### 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 Petitioner to show that he is entitled to the relief sought. *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. To be eligible to participate in the West Virginia Tax Amnesty Program, W. Va. Code § 11-10D-1, *et seq.*, the Petitioner was required to dismiss any administrative proceeding pending before any administrative agency of this state, including this proceeding before the West Virginia Office of Tax Appeals, for nonpayment, delinquency, fraud or other event of

noncompliance in relation to any of the taxes administered under the West Virginia Tax Procedures Act, W. Va. Code § 11-10-1 *et seq.* *See* W. Va. Code § 11-10D-6(b)(2).

3. W. Va. Code § 11-10D-6(b)(2) would have authorized the Petitioner to participate in the West Virginia Tax Amnesty Program if he had withdrawn, with prejudice, this proceeding prior to the granting of amnesty, and if he had paid in full the outstanding tax liability plus fifty percent of the accrued interest thereon and otherwise cured any default respecting his personal income tax for 1999, 2000, and 2001. *See* W. Va. Code § 11-10D-6(b)(2).

4. The Petitioner was not eligible to participate in the Tax Amnesty Program because he failed to satisfy the conditions of W. Va. Code § 11-10D-6(b)(2).

5. Absent an application for extension of the time to file his personal income tax returns and pay the tax shown due thereon, the Petitioner was, at a minimum, required to make a good faith determination of the amount of taxable income he received in distributions from the escrow account containing the proceeds of the settlement of his automobile accident and to file his personal income tax returns based on his determination. *See* W. Va. Code § 11-21-51(a)(1); W. Va. Code. St. R. §§ 110-21-57.1.1.2, 57.1.1.5 and 57.1.3 (Apr. 2, 1990).

6. The Petitioner is not entitled to waiver of additions to tax for failure to file his personal income tax returns for the periods covered by this assessment because the reasons articulated by the Petitioner for his failure to file do not constitute reasonable cause for waiver of additions to tax. *See* W. Va. Code § 11-10-18(a)(1).

7. The Petitioner is entitled to waiver of additions to tax assessed for his failure to pay an amount shown due on a tax return for the periods prior to the time that he filed his personal income tax returns. *See* W. Va. Code § 11-10-18(a)(2).

8. Failing to show reasonable cause, the Petitioner is liable for payment of additions to tax for his failure to pay an amount shown due on a tax return for the periods subsequent to the time that he filed his personal income tax returns. *See* W. Va. Code § 11-10-18(a)(2).

#### **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 period of January 1, 1999, through December 31, 2001, for tax in the amount of \$, interest in the amount of \$, computed through March 26, 2003, and additions to tax of in the amount of \$, for a total assessed tax liability of \$, should be and is hereby **MODIFIED** in accordance with the above Findings of Fact and Conclusions of Law for tax in the amount of \$, interest, on the revised tax, in the amount of \$, through July 12, 2004, and additions to tax of \$, for a **total revised** liability of \$.