

**SYNOPSIS**

**CONSUMERS' SALES AND SERVICE TAX AND BUSINESS FRANCHISE TAX – ESTIMATED ASSESSMENTS SUPPLANTED BY ACTUAL INCOME AND CAPITAL FIGURES** – Post-audit this tribunal will, upon investigation, accept actual income and capital information supplied by the Petitioner in lieu of tax estimates.

**ADMINISTRATIVE DECISION**

The Auditing Division issued an estimated consumers' sales and service tax assessment against the Petitioner. This assessment was for the period of July 24, 1996 through July 31, 2000 for tax, interest through July 31, 2000, and additions to tax, for a total assessed liability.

Also, on April 20, 2001, the Division issued an estimated purchasers' use tax assessment against the Petitioner for the period of July 24, 1996 through July 31, 2000, for tax, interest through July 31, 2000, and additions to tax of \$360.00, for a total assessed liability.

Also, on April 20, 2001, the Division issued an estimated business franchise tax assessment against the Petitioner for the period of July 24, 1996 through December 31, 2000, for tax, interest, through December 31, 2000, and additions to tax, for a total assessed liability.

Finally, on April 20, 2001, the Division issued a business registration tax assessment against the Petitioner for the period of July 1, 1997 through June 30, 2001, for tax, interest through June 30, 2001, and additions to tax, for a total assessed tax liability.

**FACTS**

During the assessment period the Petitioner operated a bar selling snacks, beer, and other alcohol beverages.

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Petitioner purchased the business and operated same for almost four (4) years until closing the doors.

Petitioner admitted that he never kept any tax records because he never collected sales tax owed upon his belief that if tax was not collected he would not have to keep tax records.

Because Petitioner did not have tax records at the time of the audit, the tax auditor had no choice but to estimate the sales, use, and business franchise tax assessments.

At the hearing, Petitioner did not contest the use tax and business registration tax assessments but did provide tax figures in support of his argument that the sales tax and business franchise tax assessments should be revised.

#### **ISSUE AND DETERMINATION**

The sole issue is whether the Petitioner has shown that the consumers' sales and service tax and business franchise tax assessments are incorrect and contrary to law, in whole or in part, as required by W. Va. Code § 11-10-9.

Although Petitioner committed a grievous error in not collecting any sales tax while operating the bar and failed to file any tax returns as mandated by law, this tribunal will accept Petitioner's post-audit income records in lieu of estimated figures, upon investigation and verification.

In a hearing on a petition for reassessment, the burden of proof is upon the taxpayer to show that the assessment is incorrect and contrary to law, in whole or in part. In this matter the Petitioner has shown that two (2) of the estimated assessments should be so revised. Accordingly, it is **DETERMINED** that the Petitioner has carried the burden of proof with respect to this issue.

**WHEREFORE**, it is the **DECISION** of the **STATE TAX COMMISSIONER OF WEST VIRGINIA** that the purchasers' use tax assessment issued against the Petitioner for the

period of July 24, 1996 through July 31, 2000, for tax, interest, updated through March 31, 2002, and additions to tax, should be and is hereby **AFFIRMED**.

It is **ALSO** the **DECISION** of the **STATE TAX COMMISSIONER OF WEST VIRGINIA** that the business registration tax assessment issued against the Petitioner for the period of July 1, 1997 through June 30, 2001, for tax, interest, updated through March 31, 2002, and additions to tax, should be and is hereby **AFFIRMED**.

It is **ALSO** the **DECISION** of the **STATE TAX COMMISSIONER OF WEST VIRGINIA** that the consumers' sales and service tax assessment issued against the Petitioner for the period of July 24, 1996 through December 31, 2000 should be and is hereby **MODIFIED** in accordance with the above Determination(s) for tax, interest, on the revised tax, updated through March 31, 2002, and additions to tax.

It is **ALSO** the **DECISION** of the **STATE TAX COMMISSIONER OF WEST VIRGINIA** that the business franchise tax assessment issued against the Petitioner for the period of July 24, 1996 through December 31, 2000 should be and is hereby **MODIFIED** in accordance with the above Determination(s) for tax, interest, on the revised tax, updated through March 31, 2002, and additions to tax.

It is further **DETERMINED** that the interest on these tax liabilities for the period of April 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).