

**SYNOPSIS**

**CONSUMERS' SALES AND SERVICE TAX – NO REASONABLE CAUSE SHOWN FOR WAIVER OF ADDITIONS TO TAX-** Failure to appear or to otherwise show that reasonable cause exists for waiver of additions to tax mandates that the same be upheld. *See* W.Va. Code § 11-10-18(a) (1)-(2), and W.Va. Code § 11-10A-10(e).

**FINAL DECISION**

The Internal Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) issued a consumers’ sales and services tax assessment against the Petitioner. The assessment was for the period of March 1, 2002, through, June 30, 2002, for no tax, interest, through, July 15, 2003, and additions, for a total assessed liability. Written notice of this assessment was served on the Petitioner. The Petitioner thereafter timely filed a petition for reassessment, with this tribunal, the West Virginia Office of Tax Appeals. *See* W. Va. Code § 11-10A-8(1) [2002].

**FINDINGS OF FACT**

1. In its petition for reassessment Petitioner offered no evidence (or argument) whatsoever regarding waiver of additions to tax.

2. A review of the file does not indicate any reasons why additions to tax should be waived.

### **DISCUSSION**

The sole issue is whether any showing has be made for waiver of the additions to tax pursuant to W.Va. Code § 11-10-18 (a)(1)-(2).

### **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 a petitioner-taxpayer, to show that reasonable cause exists for waiver the additions to tax. W.Va. Code § 11-10-18 (a)(1)-(2), and W.Va. Code § 11-10A-10(e).

2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to the issue of reasonable cause for waiver of additions to tax.

### **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the consumers' sales and services tax assessment issued against the Petitioner for the period of March 1, 2002 through June 30, 2002, for no tax, interest, and additions to tax, should be and is hereby **AFFIRMED**.

## APPEAL PROCEDURES

If an aggrieved party wishes to appeal this Final Decision to an appropriate West Virginia circuit court, W. Va. Code § 11-10A-19(a), as last amended, sets forth that such an appeal must be filed within sixty (60) days after the date of service of this Final Decision upon the party. W. Va. Code § 11-10A-19, as last amended, sets forth the outline for the procedure for the appeal to circuit court (an appeal petition filing fee is normally required), including, in most cases, filing an appeal bond by a taxpayer. Under W. Va. Code § 11-10A-19(b), as last amended, the West Virginia Office of Tax Appeals (or one or more of its administrative law judges), as a totally independent, quasi-judicial tribunal, is not a party to the appeal and is not to be named as a party to the appeal.

On the other hand, under W. Va. Code § 11-10A-19(f), as last amended, and under W. Va. Code § 29A-5-4(b), as last amended, to provide the record to the circuit court, the **appellant** to the circuit court is to provide the West Virginia Office of Tax Appeals (as well as the other party to the appeal, that is, the State Tax Commissioner's Office or the Taxpayer) with a certified copy of the filed petition for appeal (showing the circuit court in which the petition was filed, the date filed, and the "civil action number" for the appeal from an administrative agency), along with a certified copy of any order filing the petition or of any other initial process document setting forth the directives of the court with respect to processing the appeal.

Within fifteen (15) days after receipt of this written notice of the appeal, or within such further time as the circuit court may allow, the West Virginia Office of Tax Appeals, pursuant to the provisions of W. Va. Code § 29A-5-4(d), as last amended, will prepare and transmit to the circuit court a certified copy of the entire record in the matter.

As set forth in 121 C.S.R. 1, § 86 (Apr. 20, 2003) (Rules of Practice and Procedure before the West Virginia Office of Tax Appeals), the West Virginia Office of Tax Appeals will: (1) send to the parties a detailed index of the record at the same time it transmits to the circuit court a certified copy of the entire record, § 86.4; (2) at the same time send to the appellant(s) a bill (payable to the “State of West Virginia”), due within twenty (20) calendar days, for the reasonable costs of preparing the record, § 86.3; and (3) upon payment of such record preparation costs, send to the parties a certified copy of the entire record.

---