

**SANITIZED DEC. 03-619 C – BY GEORGE V. PIPER – SUBMITTED FOR
DECISION ON 06/15//04 - ISSUED 07/01/04**

SYNOPSIS

CONSUMERS' SALES AND SERVICE TAX -- BURDEN OF PROOF NOT MET -- At hearing Petitioner's failure to offer any defense whatsoever as to the results of the tax audit, mandates that the same be upheld *in toto*.

FINAL DECISION

A tax examiner with the Field Auditing Division of the West Virginia State Tax Commissioner's Office conducted an audit of the books and records of the Petitioner. Thereafter, on August 20, 2003, the Director of this Division of the Commissioner's Office issued a consumers' sales and service 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 15 of the West Virginia Code. The assessment was for the period of April 28, 2000 through April 30, 2003, for tax, interest, through August 31, 2003, and additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail, 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 hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002] and 121 C.S.R. 1, § 63.3.3 (Apr.20, 2003).

FINDINGS OF FACT

1. Petitioner operates a bar in West Virginia.
2. Based upon the limited records available, including the cash register tapes (also known as “Z” tapes), the tax auditor made a finding that said records did not correctly reflect the total sales of the business.
3. Using the 2002 tax year, the tax auditor found out from the Petitioner the amount for the cost of goods and the price at which the items were sold. Those figures were then extended to the other years contained in the audit.

DISCUSSION

The first issue is whether the Petitioner has shown that the assessment is incorrect and contrary to law, in whole or in part.

At the hearing, Petitioner’s President had absolutely no defense to the results of the audit, except to say that her accountant should have caught these discrepancies.

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 the assessment is incorrect and contrary to law, in whole or in part. *See* W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to the issue of the actual amount of consumers' sales and service tax liability of the bar during the audit period.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the consumers' sales and service tax assessment issued against the Petitioner for the period of April 28, 2000 through April 30, 2003, for tax, interest, and additions to tax, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002], **interest accrues** on this tax assessment until this liability is fully paid.