

## SYNOPSIS

**PURCHASERS' USE TAX -- REFUND CLAIM -- BURDEN OF PROOF MET**  
-- Notwithstanding the fact that Petitioner's certified public accountant did not have specific documentary proof that she timely gave Petitioner's refund claim to a State Tax Commissioner official for delivery, the sworn evidence in the case, both written and testimony, shows that same was timely given to the Tax Commissioner's representative for filing, who in writing has admitted that he did routinely accept such deliveries and does remember discussing this particular refund claim with Petitioner's witness.

## FINAL DECISION

On a date subsequent to October 1, 1999, Petitioner filed a claim for refund of purchasers' use tax, for the periods of May 1, 1998 through December 31, 1998 and June 1, 1999 through October 31, 1999. Said refund claim was not acted upon by the Internal Auditing Division of the State Tax Commissioner's Office.

On August 13, 2003, Petitioner again filed a claim for refund of purchasers' use tax for the aforementioned tax periods. The Division of the West Virginia State Tax Commissioner's Office, by a letter dated August 13, 2003, denied the refund claim as being violative of W. Va. Code § 11-10-14 in that said claim was filed more than three (3) years after the due date of the returns for which the refund was sought.

Thereafter, the Petitioner timely filed with this tribunal a petition for refund by mail postmarked August 14, 2003, pursuant to W. Va. Code § 11-10A-8(2) [2002] and W. Va. Code § 11-10A-9(b) [2002].

## **FINDINGS OF FACT**

1. At hearing, Petitioner's certified public accountant testified that she and former Tax Commissioner regional office representative spoke about filing the refund claim prior to doing so.

2. In a post-hearing statement the aforesaid regional office representative stated as follows:

22 December 2003  
To Thom It May Concern:

While employed by the WV State Tax Department it was a regular task once a month, on or near the 15<sup>th</sup> of the month, to stop by various business establishments and local accounting offices in and around one WV area to pick up tax payments to include such payments as: Consumers' Sales Tax, State Withholding Tax, Severance Tax, Business Franchise Tax, Corporate Income Tax, and any other tax to be remitted to the State Tax Department.

3. Petitioner's representative further testified that she remembers giving the refund claim, including supporting documentation to the regional office representative who told her that he remembers discussing this particular refund claim with Petitioner's representative.

## **ISSUE AND DETERMINATION**

The sole issue is whether Petitioner has met its burden of proof showing that it is entitled to the refund. This tribunal is somewhat sympathetic with the State's position that absolute proof of delivery (filing) of the refund claim is necessary to meet said burden; however, the sworn testimony and documentary evidence shows that Petitioner's representative gave the refund claim to the regional office representative for filing, because he now states that that is what he routinely did when visiting C.P.A. offices and because he does not dispute at all the Petitioner's rendition of the facts in this case.

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 refund, the burden of proof is upon the petitioner-taxpayer to show that the petitioner-taxpayer is entitled to the refund. See W. Va. Code § 11-10A-10(e) [2002]; 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has shown that it is entitled to the refund because its representative proved that she timely gave the refund claim to a Tax Commissioner's representative for filing, which he admits that he routinely accepted.

3. Petitioner is cautioned, however, that in the future, all documents are to be filed by mail with the Tax Commissioner directly, and not by hand delivery to her local agents, unless a signed receipt is kept identifying all of the particulars (specific document, date of delivery, identity of recipient, etc.).

### **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION OF THE WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioners' petition for refund of West Virginia purchasers' use tax, for the periods May 1, 1998 through December 31, 1998 and June 1, 1999 through October 31, 1999, should be and is hereby **GRANTED**.

The West Virginia State Tax Commissioner's Office is to commence forthwith the process for payment of the refund, plus any statutory interest.