

SYNOPSIS

CONSUMERS' SALES AND SERVICE TAX -- BURDEN OF PROOF NOT MET -- Failure by the Petitioner to appear or otherwise prove the validity of its refund petition mandates that the same be denied. W. Va. Code § 11-10A-10(e) [2002].

FINAL DECISION

On January 2, 2004, the Petitioner filed in essence, a claim for refund of consumers' sales and service tax for the months of July and August, 2003. The Petitioner actually filed, prematurely, with this tribunal, the West Virginia Office of Tax Appeals, a petition for refund, in December, 2003. The same was improvidently docketed at that time. Upon discovering that a claim for refund had not been filed, the petition was forwarded to the Internal Auditing Division, which processed it as a claim for refund. The Accounts Monitoring Unit of the Internal Auditing Division ("the Division") of the West Virginia State Tax Commissioner's Office ("the Commissioner" or the "Respondent"), by letter dated March 17, 2004, stated the reason for denial was that the Petitioner's tax records did not reflect a double payment for those two (2) months.

The Petitioner thereafter was deemed to have timely filed with this tribunal, a petition for refund. There was no appearance on behalf of the Petitioner when the hearing was convened. The hearing was held, however, without an appearance on behalf of the Petitioner or the Commissioner, *see* W. Va. Code § 11-10A-10(a) [2002] and 121 C.S.R. 1, § 69.1 (Apr. 20, 2003).

FINDINGS OF FACT

At the hearing Tax Commissioner's counsel stated that no double payment from the Petitioner was ever received.

DISCUSSION

The sole issue is whether the Petitioner has shown that it is entitled to the refund as claimed.

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 refund, the burden of proof is upon the petitioner-taxpayer to show, not just allege, that the petitioner-taxpayer is entitled to the refund. See W. Va. Code § 11-10A-10(e) [2002].
2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to the issue raised in its petition.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioner's petition for refund of consumers' sales and service tax for the months of July and August, 2003, is hereby **DENIED**.