

**SANITIZED DEC. 04-588 C – BY GEORGE V. PIPER – SUBMITTED FOR
DECISION 4/27/05 – ISSUED 6/8/05**

SYNOPSIS

CONSUMERS' SALES AND SERVICE TAX – BURDEN OF PROOF NOT MET – Failure of a properly served partner to appear at the evidentiary hearing or to otherwise prove that the assessment is incorrect, in whole or in part, confers liability against both partners, pursuant to the Uniform Partnership Act, regardless of whether the partnership agreement was ever reduced to writing.

FINAL DECISION

On August 25, 2004, the Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued a consumers' sales and service tax assessment against the Petitioners-partners, dba a certain partnership.

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 July 1, 2003 through December 31, 2003, for tax, interest, and additions to tax, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioners.

Thereafter, by mail postmarked September 7, 2004, one of the Petitioners 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 Petitioners.

There was no appearance on behalf of the Petitioners when the hearing was convened. The hearing was held, however, without an appearance on behalf of the

Petitioners, *see* W. Va. Code § 11-10A-10(a) [2002] and 121 C.S.R. 1, § 69.1 (Apr. 20, 2003).

FINDINGS OF FACT

In his petition for reassessment, Petitioner 1 stated that the company was a partnership that “went broke” and that he and Petitioner 2 were partners.

DISCUSSION

The only issue is whether the Petitioners have shown that the assessment is incorrect and contrary to law, in whole or in part.

Nothing in Petitioner 1’s petition for reassessment contested the assessment as issued other than to lament the fact that his former partner, Petitioner 2, had transferred all of the business assets into his own name and had disappeared.

It should be noted that under the Uniform Partnership Act, W. Va. Code § 47B-1-1 *et. seq.*, service of process upon one of the partners is considered service upon both if a finding is made that the partnership is liable. It is also of no consequence that apparently the partnership agreement was never reduced to writing.

CONCLUSIONS OF LAW

Based upon all of the above it is **HELD** 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, § 63.1 (Apr. 20, 2003).

2. The Petitioners-taxpayers in this matter have failed to carry the burden of proof with respect to the issue of whether they were liable for the assessment as issued. *See* 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

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 Petitioners for the period of July 1, 2003 through December 31, 2003, for tax, interest, and additions to tax, totaling \$, should be and is hereby **AFFIRMED**.

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