

**SANITIZED DEC. 04-670 C – BY ROBERT W. KIEFER, JR. – SUBMITTED FOR
DECISION 1/5/05 – ISSUED 6/10/05**

SYNOPSIS

The failure of the Petitioner to appear at a hearing and to present any evidence respecting his claim will result in a denial of relief to the taxpayer. *See* W. Va. Code § 11-10A-10(e) [2002]; 121 C.S.R. 1, §§ 63.1 and 69.2 (Apr. 20, 2003).

FINAL DECISION

On September 15, 2004, the Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued an assessment for consumers' sales and service tax 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 October 1, 2002, through December 31, 2003, for tax, interest and additions to tax, for a total assessed tax liability. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked October 12, 2004, received by the State Tax Commissioner's office on October 14, 2004, and forwarded to and received by this tribunal, the West Virginia Office of Tax Appeals, on October 18, 2004, the Petitioner timely filed a petition for reassessment. Subsequently, notice of an evidentiary hearing was furnished to the Petitioner. Notice of the evidentiary hearing was served upon the Petitioner on November 24, 2004, as evidenced by United States Postal Service Form PS 3811, August 2001, domestic Return Receipt.

At the time scheduled for convening the evidentiary hearing, there was no appearance on behalf of the Petitioner. The evidentiary hearing was held, however, without an appearance on

behalf of the Petitioner, in accordance with the provisions of W. Va. Code § 11-10A-10(a) [2002] and 121 C.S.R. 1, § 69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. The petition for reassessment filed by the Petitioner was a preprinted form, which is on the back of the assessment which was served on him by the State Tax Commissioner.

2. On the petition for reassessment, the rear side of the document, the Petitioner filled in blanks on the form, providing his name, address and other identifying information, and signed the form. No other information was set forth thereon.

3. On the assessment, the front side of the document, the Petitioner asserted “did not work under business license at all.”

4. The Petitioner also attached quarterly consumers’ sales and service tax returns for the periods of the assessment, which show that the Petitioner had no gross receipts for the period, that he had not collected consumers’ sales and service tax and that he owed no consumers’ sales and service tax.

5. While the grounds articulated by the Petitioner are adequate to show that the assessment is erroneous, unlawful, void or otherwise invalid, the Petitioner did not present any corroborating evidence which proves the grounds articulated.

6. The Petitioner was provided with notice that he was required to appear at the evidentiary hearing and present evidence respecting the reasons he believed that the assessment was erroneous, unlawful, void, or otherwise invalid.

7. The Petitioner did not appear at the time and place of the hearing and presented no evidence respecting any of his allegations.

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 the Petitioner to show that any assessment of tax against him is erroneous, unlawful, void, or otherwise invalid. *See* W. Va. Code § 11-10A-10(e) [2002]; 121 C.S.R. 1, §§ 63.1 and 69.2 (Apr. 20, 2003).
2. The Petitioner in this matter has failed to carry his burden of proving that the assessment of taxes against him is erroneous, unlawful, void or otherwise invalid.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the Petitioner for the period October 1, 2002, through December 31, 2003, for tax, interest, and additions to tax, for a total assessed tax liability of \$, should be and is hereby **AFFIRMED**.