

**SANITIZED DECS. 04-724 C & 04-725 C – BY GEORGE V. PIPER -
SUBMITTED FOR DECISION 4/26/05 – ISSUED 6/14/05**

SYNOPSIS

CONSUMERS' SALES AND SERVICE TAX – BURDEN OF PROOF NOT MET – Failure by the Petitioner to appear or to otherwise prove that the assessments are incorrect and contrary to law, in whole or in part, mandates that the same be upheld *in toto*.

FINAL DECISION

On September 15, 2004, the Internal Auditing Division of the West Virginia State Tax 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 August 1, 2001 through December 31, 2002, for tax, interest, and additions to tax, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioner.

Also, on September 15, 2004, the Commissioner issued a consumers' sales and service tax assessment against the Petitioner, under the provisions of Chapter 11, Articles 10 and 15 of the West Virginia Code, for the period of January 1, 2003 through June 30, 2003, for tax, interest, and additions to tax, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioner.

Thereafter, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, petitions for reassessment. *See* W. Va. Code § 11-10A-8(1) [2002].

Subsequently, notice of a hearing on the petitions was sent to the Petitioner.

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

FINDINGS OF FACT

In the petitions for reassessment, the Petitioner stated that after getting a business license, “the business failed and that if something could be worked out it would make paying taxes next year less confusing.”

DISCUSSION

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

Having failed to appear at the hearing or otherwise prove that the assessments are incorrect leaves this tribunal no alternative but to uphold both *in toto*.

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 Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to the issue of the correctness of the assessments. *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 Petitioner for the period of August 1, 2001 through December 31, 2002, 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.

It is **ALSO** 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 January 1, 2003 through June 30, 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.