

**SANITIZED DECISION – DOCKET NO. 05-340 C – ROBERT W. KIEFER, JR., ALJ –
SUBMITTED for DECISION on AUGUST 30, 2005 – ISSUED on FEBRUARY 7, 2006**

SYNOPSIS

CONSUMERS SALES AND SERVICE TAX -- TAXPAYERS' FAILURE TO CARRY BURDEN OF PROOF -- The failure of taxpayers to articulate adequate grounds in their petition for reassessment justifying their claim, combined with their failure to appear at a hearing and to present any evidence respecting their claim, will result in a denial of relief to the taxpayer. *See* W. Va. Code § 11-10A-10(e) [2002]; W. Va. Code. St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

FINAL DECISION

On April 7, 2005, the Unit Manager of the Accounts Monitoring Unit of the Internal Auditing Division of the State Tax Commissioner's Office ("the Commissioner") 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 January 1, 2002, through December 31, 2004, for tax in the amount and interest in the amount, computed through April 30, 2005, for a total assessed tax liability. Written notice of this assessment was served on the Petitioner on April 9, 2005.

Thereafter, by facsimile transmission, received in the offices of this tribunal, the West Virginia Office of Tax Appeals, on June 1, 2005, the Petitioner timely filed a petition for reassessment. *See* W. Va. Code §§ 11-10A-8(1) [2002] and 11-10A-9(a)-(b) [2002].

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 W. Va. Code. St. R. § 121-1-69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. In its petition for reassessment, the Petitioner asserted that its customers questioned whether the petitioner should be collecting consumers' sales and service tax, because it was providing a service. The Petitioner alleges that its accountant contacted the State Tax Commissioner's regional office and was advised by a named employee of that office of the Commissioner that, because of the type of service it provides, it was not required to collect tax.

2. The grounds articulated by the Petitioner are so general in nature that they do not clearly demonstrate that the assessment is erroneous, unlawful, void or otherwise invalid.

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

4. The Petitioner did not appear at the time and place of the hearing and presented no evidence respecting any of its 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 it is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code § 11-10A-10(e) [2002]; W. Va. Code. St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

2. The Petitioner in this matter has failed to carry its burden of proving that any assessment of taxes against it 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 January 1, 2002, through December 31, 2004, for tax in the amount and interest in the amount, through April 30, 2005, should be and is hereby **AFFIRMED**.

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