

**SANITIZED DECISION – DOCKET NO. 05-586 C – GEORGE V. PIPER, ALJ –
SUBMITTED for DECISION on DECEMBER 12, 2005 – ISSUED on DECEMBER
29, 2005**

SYNOPSIS

**CONSUMERS’ SALES AND SERVICE TAX-- INTEREST NOT
WAIVABLE-** Pursuant to W.Va Code §11-10-17(a), interest shall be imposed regarding
any failure to pay or the under payment of tax due from the last date prescribed for
payment to the date that the tax is paid and is not subject to waiver.

FINAL DECISION

On September 15, 2005, the Internal Auditing Division (“the Division”) of the
West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the
Respondent”) issued a consumers’ sales and service tax assessment against the Petitioner,
an individual as an officer, of , a corporation. 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
November 1, 1997 through December 31, 1999 for tax, interest, through September 15,
2005, and additions to tax of \$ 1,441.97, for a total assessed liability. Written notice of
this consumer’s sales and service tax officer liability assessment was served on the
Petitioner.

Thereafter, by mail postmarked November 18, 2005, the Petitioner 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].

In his petition for reassessment Petitioner waived his right to be heard in person,
opting instead for a written decision based upon documents previously supplied.

FINDINGS OF FACT

1 During the period involved in the assessment, the Petitioner did not contest the fact that he was a duly authorized officer of the corporation.

2. Petitioner maintained that the corporation ceased doing business in December, 1999 because of financial problems and that when he left neither the business nor he had any assets.

3. Petitioner's only argument set forth in his petition for reassessment was that if the interest and penalty were waived, he could ultimately pay off the taxes owed.

4. In due course Respondent's counsel submitted a reply, stating that he had no objection to waiver of the additions to tax but did object to any waiver of interest.

DISCUSSION

The only issue presented for determination is whether the statutorily imposed interest set forth in W.Va. Code §11-10-17 (a) may be waived. In a word, "No," because W.Va Code §11-10-17(a) provides that interest "shall" be imposed regarding any failure to pay or the underpayment of tax due from the last date prescribed for payment to the date that the tax is paid. Said statute does not provide any mechanism to waive said interest and, therefore, the same must be upheld *in toto*.

CONCLUSIONS OF LAW

1. The Petitioner is one of the corporate officers who is personally liable for all or any portion of the unpaid consumers' sales and service tax liability of the corporation for the period involved in the assessment.

2. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment the burden of proof is up on the Petitioner-taxpayer to show that the assessment is incorrect and contrary to the law, in whole or in part. *See* W. Va. Code §11-10A-10(e) [2002] and W.Va. Code St. R. § 121-1-63.1 (April 20, 2003)

3. The Petitioner-taxpayer in this matter has not carried the burden of proof with respect to his contention that the statutorily imposed interest may be waived.

DISPOSITION

WHEREFORE, it is the **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 November 1, 1997 through December 31, 1999, for tax, and interest, **totaling**, should be and is hereby **AFFIRMED**, the **ADDITIONS TO TAX** in the amount, however, are **VACATED** in full.