

**SANITIZED DECISION – 06-196 W – BY ROBERT W. KIEFER, JR., ALJ –
SUBMITTED for DECISION on JUNE 13, 2006 – ISSUED on DECEMBER 1, 2006**

SYNOPSIS

WITHHOLDING TAX – CIVIL MONEY PENALTY – NO PERSONAL LIABILITY FOR POST-RESIGNATION DEFAULTS – When a taxpayer withholds personal income tax from employees but does not pay the amounts withheld over to the State of West Virginia, an officer or other “responsible person” who resigns prior to the date that tax is withheld from employees’ pay is not personally liable for tax withheld by the taxpayer subsequent to his resignation.

FINAL DECISION

On January 15, 2006, the Accounts Monitoring Unit of the Internal Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) issued two withholding tax civil money penalty assessments against the Petitioner. These assessments were issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessments were for periods between April 1, 2000, through June 30, 2005, for a civil money penalty totaling \$. No interest or additions to tax were assessed. Written notice of the assessments was served on the Petitioner.

Thereafter, by mail postmarked March 8, 2006, and received in the offices of the West Virginia Office of Tax Appeals on March 10, 2006, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. W. Va. Code §§ 11-10A-8(1) [2002] and 11-10A-9(a)-(b) [2005].

Subsequently, notice of a hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002].

FINDINGS OF FACT

1. The Petitioner assumed the position of “Acting Director” of a certain county-owned and -operated emergency medical services authority, effective September 27, 1997. *See* Petitioner’s Exhibit No. 1.

2. The emergency medical services authority operated the corporation involved here, named ____, the name by which the ambulance service corporation was known.

3. The emergency medical services authority existed for the sole purpose of operating the ambulance corporation.

4. During his tenure as Director of the ambulance corporation, the Petitioner was also the Director of the County 911 service.

5. Between September 27, 1997, and the fall of 1999, the Petitioner was involved in establishing the 9-1-1 service in a certain county, which was not operational until the fall of 1999.

6. When the County 9-1-1 service went on line in the fall of 1999, other ambulance service businesses competing with this ambulance corporation, which also relied on 9-1-1 calls, complained that the Petitioner's dual role constituted a conflict of interest.

7. Because of this real or perceived conflict of interest, the Petitioner determined that it was necessary for him to resign as Director of the ambulance corporation.

8. By letter dated September 24, 1999, and tendered to the President of the County Commission of _____ County, West Virginia, the Petitioner resigned as Director of the ambulance corporation.

9. To the best of the Petitioner's recollection, he performed no services as Director of the ambulance corporation after September 24, 1999.

10. The Petitioner tendered Petitioner's Exhibit No. 2, the minutes of the regularly-scheduled meeting of the County Commission of _____ County in West Virginia, held on October 6, 1999, and recorded in County Clerk Book Number ____, at page __. See Petitioner's Exhibit No. 2.

11. At the October 6, 1999 meeting of the County Commission of _____ County in West Virginia, the County Commission, by its President, placed on record the Petitioner's resignation as Director of the ambulance corporation. *See* Petitioner's Exhibit No. 2.

12. The Petitioner testified that the ambulance corporation went defunct in 2001 or 2002, and that the county emergency medical services authority was dissolved about that time.

13. The assessments in this matter were estimated assessments for the periods April 1, 2000 through June 30, 2001, and October 1, 2001 through June 30, 2005.

14. The State Tax Commissioner argues that the Petitioner is a "responsible person," for the county emergency medical services authority and the ambulance corporation.

DISCUSSION

The sole issue presented by this matter is whether the Petitioner is an officer or "responsible person" of the taxpayer, the county emergency medical services authority and the ambulance corporation. The Petitioner was the Director of the county emergency medical services authority commencing on September 27, 1997, and terminating with his resignation on September 24, 1999. The County Commission placed his resignation on record at its regularly scheduled meeting that took place on October 6, 1999.

The assessments issued against the Petitioner were for periods that commenced on April 1, 2000, and for periods subsequent to that date.

The Petitioner testified that he terminated his position as Director of the ambulance corporation because there was a real or perceived conflict of interest when he became Director of County's 9-1-1 service. He further testified that he performed no duties for the ambulance corporation subsequent to the date of his resignation. By terminating his position as Director, he terminated all responsibility for its management and operations. Thus, the Petitioner was not a

“responsible person” after September 24, 1999. The Petitioner is not liable for the assessment, because it is for periods subsequent to that date.

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]; W. Va. Code St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

2. The Petitioner was not the Director of the ambulance corporation for the county emergency medical services authority during the periods of the assessment, during which taxes were withheld from employees of the county emergency medical services authority and the ambulance corporation.

3. Because he was not the Director of the ambulance corporation for the county emergency medical services authority during the periods of the assessment, he cannot be held personally liable for the assessments as a corporate officer or “responsible person.”

4. The Petitioner in this matter has carried his burden of showing that he is not personally liable for the amounts assessed.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the withholding tax civil money penalty assessments issued against the Petitioner for periods between April 1, 2000, through June 30, 2005, totaling \$, should be and are hereby **VACATED**, and the Petitioner owes no further withholding tax liability for the period in question.