

**REDACTED DECISION -- 07-137 C -- BY GEORGE V. PIPER, ALJ --
SUBMITTED for DECISION on JULY 10, 2007 -- ISSUED on JULY 24, 2007**

SYNOPSIS

**CONSUMERS' SALES AND SERVICE TAX -- ADDITIONS TO TAX --
REASONABLE CAUSE NOT SHOWN FOR WAIVER OF ADDITIONS TO TAX --**
Failure of Petitioner to remit consumers' sales and service tax collected on behalf of the State of West Virginia was not due to reasonable cause but rather constituted willful neglect and, therefore, no grounds were shown for waiver of additions to tax. W. Va. Code § 11-10-18(a)(1)-(2) [1986, 2006].

FINAL DECISION

The Accounts Monitoring Unit of the Internal Auditing "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. 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 September 1, 2004 through April 30, 2005, for tax of \$___, interest, through December 31, 2006, of \$___, and additions to tax of \$___, less a remittance of \$___, for a total assessed liability of \$___. Written notice of this assessment was served on the Petitioner as required by law.

Thereafter, by mail postmarked February 13, 2007, 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] 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] and W.Va. Code St. R. §121-1-61.3.3 (April 20, 2003).

FINDINGS OF FACT

1. At the hearing Petitioner testified that he was forced out of business by several grocery chains.

2. Petitioner further testified that, when he was made aware of the fact that the collected consumers' sales and service tax had not been remitted to Respondent, he sold all of his businesses, including all the real estate.

3. Petitioner also testified that, on May 31, 2005, he contacted the Respondent and made arrangements to pay the taxes that he owed.

4. Petitioner finally testified that he is presently in poor health and has only limited income.

DISCUSSION

The only issue to be decided is whether Petitioner has shown reasonable cause for waiver of the additions to tax.

W.Va. Code § 11-10-18(a)(1)-(2) [1986, 2006] allow for waiver of additions to tax if the failure to collect and/or remit taxes due: (1) resulted from reasonable cause; and (2) was not due to willful neglect.

It is well settled that a petitioner's failure to remit consumers' sales and service tax which was collected on behalf of the State of West Virginia is clearly willful neglect, and certainly does not constitute a reasonable cause for waiver of additions.

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 the petitioner-taxpayer, to show that the assessment is

incorrect and contrary to law, in whole or part.. *See* W. Va. Code § 11-10A-10(e) [2002]; W. Va. Code. St. R. §§ 121-1-63.1 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has failed to carry his burden of proof with respect to the issue of whether his failure to remit consumers' sales and service tax constituted reasonable cause for waiver of additions to tax. *See* W.Va. Code St. R § 121-1-69.2 (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 September 1, 2004 through April 30, 2005, for tax of \$___, interest, through December 31, 2006, of \$___, and additions to tax of \$___, less a remittance of \$___, totaling \$___, must be and is hereby **AFFIRMED**.