

**SYNOPSIS**

**CONSUMERS' SALES AND SERVICE WITHOLDING TAX – BURDEN OF PROOF NOT MET** – Failure of the Petitioner to appear at hearing or to otherwise prove that the assessments are incorrect and contrary to law, in whole or in part, see W. Va. Code § 11-10A-10, mandates that the same be upheld.

**FINAL DECISION**

The Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued a withholding tax assessment against the Petitioner. This assessment was for the period of January 1, 1997 through September 30, 2001, for tax and interest, through November 15, 2001, and additions to tax.

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, 1997 through September 30, 2001, for tax, interest, through November 15, 2001, and additions to tax.

Thereafter, by mail postmarked, February 28, 2002, the Petitioner timely filed petitions for reassessment.

A hearing on the petitions was scheduled, and the Petitioner received notice of the hearing. After waiting for about twenty (20) minutes after the scheduled starting time for the hearing, this tribunal noted that no one had appeared on behalf of the Petitioner when the hearing was convened. The 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).

**FINDINGS OF FACT**

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1. Petitioner was engaged in the business of providing mortgage services for a fee.
2. Petitioner did not collect consumers' sales and service tax with respect to said services.
3. Petitioner did not remit withholding taxes on his employees' wages.

### **CONCLUSION(S) 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-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).
2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to the issue of whether mortgage services are subject to consumers' sales and service tax.
3. Also, the Petitioner has failed to carry the burden of proof regarding its failure to remit withholding taxes.

### **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the withholding tax assessment issued against the Petitioner for the period of January 1, 1997 through September 30, 2001, for tax, interest, updated through March 31, 2003, and additions to tax, should be and is hereby **AFFIRMED**.

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, 1997 through September 30, 2001, for tax, interest, updated through March 31, 2003, and additions to tax, should be and is hereby **AFFIRMED**.