

**REDACTED DECISION -- 07-449 W & 07-467 C -- BY R MICHAEL REED,
CHIEF ALJ -- SUBMITTED for DECISION on March 06, 2008 -- ISSUED on
JULY 15, 2008**

SYNOPSIS

**WITHHOLDING TAX AND CONSUMERS' SALES AND SERVICE TAX -
- CORPORATE OFFICER LIABILITY ASSESSMENTS VACATED, WITHOUT
PREJUDICE, FOR IMPROPER SERVICE** -- The West Virginia Office of Tax Appeals will vacate, without prejudice, an assessment of a withholding tax money penalty and an assessment of a corporate officer liability for a certain corporation's debt for consumers' sales and service tax, when, as here, the assessments were not served in compliance with W. Va. Code § 11-10-5e [1986], in that the State Tax Commissioner did not serve notice of the assessments by first class mail, or by another valid method of service, after the notice of the assessments which had been sent by certified mail to the taxpayer's last known address had been returned "unclaimed."

**WITHHOLDING TAX AND CONSUMERS' SALES AND SERVICE TAX -
- CORPORATE OFFICER LIABILITY -- PETITIONS OF STATEMENTS OF
ACCOUNT DISMISSED** -- The West Virginia Office of Tax Appeals will dismiss, as improvidently docketed, petitions of internally inconsistent and, therefore, vague "Statements of Account" which, although containing some language indicating that an actual assessment of tax was involved, overall demonstrate that only a routine monthly clerical update of the accounts was involved, as part of the State Tax Commissioner's new computerized billing system.

**FINAL ORDER
VACATING, WITHOUT PREJUDICE,
IMPROPERLY SERVED ASSESSMENTS
AND DISMISSING PETITIONS OF STATEMENTS OF ACCOUNT
AS IMPROVIDENTLY DOCKETED**

After a thorough review of the record in this matter, including the briefs of the parties on the preliminary issues addressed herein, this tribunal does hereby enter this **FINAL ORDER VACATING, WITHOUT PREJUDICE**, the actual **ASSESSMENTS** issued by the Respondent State Tax Commissioner on April 04, 2007, with respect to the alleged corporate officer liability of the above named Petitioner for the certain corporation's withholding tax and consumers' sales and service tax debts for the time periods in question; these two actual assessments of tax were not served in compliance with W. Va. Code § 11-10-5e [1986], in that the State Tax Commissioner did not serve notice of the assessments by first class mail, or by another valid method of service, after the notice of the assessments which had been sent by certified mail to the taxpayer's last known address had been returned "unclaimed."

This tribunal does **ALSO** hereby enter this **FINAL ORDER DISMISSING, AS IMPROVIDENTLY DOCKETED**, the Petitioner's **PETITIONS** for "REASSESSMENT" of the "**STATEMENTS of ACCOUNT**," issued by the Respondent on June 13, 2007, with respect to the alleged corporate officer liability of the above named Petitioner for the certain corporation's withholding tax and consumers' sales and service tax debts for the time periods in question; these internally inconsistent and, therefore, vague "Statements of Account," contain some language indicating that an actual assessment of tax was involved, but overall demonstrate that only a routine monthly clerical update of the accounts was involved, as part of the State Tax Commissioner's new computerized billing system. A document prepared by a certain person is construed strictly against the preparer. *See, e.g., Hays & Co. v. Ancro Oil & Gas, Inc.*, 186 W. Va. 153, 155, 411 S.E.2d 478, 480 (1991). This tribunal would have

subject-matter jurisdiction of a petition for reassessment of an actual assessment of state tax. W. Va. Code § 11-10A-8(1) [2002, 2007].

This tribunal notes the objection of the Respondent to these rulings.

The Executive Director of this tribunal is to serve a copy of this Final Order upon counsel of record by certified mail.