

REDACTED DECISION -- 06-431 U -- BY GEORGE V. PIPER, ALJ -- SUBMITTED for DECISION on JULY 10, 2007 -- ISSUED on AUGUST 3, 2007

SYNOPSIS

PURCHASERS' USE TAX -- ADDITIONS TO TAX -- REASONABLE CAUSE NOT SHOWN FOR WAIVER OF ADDITIONS TO TAX -- Failure of Petitioner to pay or remit purchasers' use tax for a period of two and one-half years, as determined by a field audit, was not due to reasonable cause and was due to willful neglect; therefore, no grounds were shown for waiver of additions to tax. W.Va. Code § 11-10-18(a)(1)-(2) [1986, 2006].

FINAL DECISION

A tax examiner with the Field Auditing "Division" of the West Virginia State Tax Commissioner's Office ("the Commissioner" or "the Respondent") conducted an audit of the books and records of the Petitioner. Thereafter, on July 11, 2006, the Director of this "Division" of the Commissioner's Office issued a purchasers' use 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 A of the West Virginia Code. The assessment was for the period of June 1, 2003 through December 31, 2005, for tax of \$_____, interest through July 31, 2006, of \$_____, and additions to tax 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 July 24, 2006, 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's representative testified that the failure to pay purchasers' use tax during the audit period was the direct result of a stroke sustained by the corporate bookkeeper, in 2005, which left her partially paralyzed and unable to perform her duties, which included the proper filing of tax returns.

2. Petitioner's representative admitted upon cross-examination that an earlier audit conducted upon Petitioner's books and records found that Petitioner had failed to pay purchasers' use tax as required by law, although no additions to tax were assessed during that audit.

3. Petitioner's representative also testified that, while it was his responsibility to file Petitioner's federal tax returns, all of the purchasers' use tax returns were normally to be filed by the Petitioner's bookkeeper.

4. Respondent's counsel argued that many of the purchases by Petitioner for which no purchasers' use tax was paid occurred prior to the corporate bookkeeper's stroke, although Petitioner continued to file returns showing no tax due, both before and after her stroke.

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] allows for waiver of additions to tax if the failure to collect or remit taxes due (1) resulted from reasonable cause and (2) was not due to willful neglect.

In this case Petitioner's representative argues that the entire failure to properly pay purchasers' use tax resulted from the corporate bookkeeper's illness; however, the facts undermine that argument in that:

1. A prior audit had already put Petitioner on notice that purchasers' use tax was not being reported properly.
2. Most of the quarterly purchasers' use tax filings occurred prior to the illness, so the illness was not really a factor.
3. Petitioner filed each and every quarterly purchasers' use tax return showing no tax due, when its books and records clearly showed that taxes were due.

Based upon the above reasons, it is determined that Petitioner's failure to properly pay purchasers' use tax resulted from willful neglect, and no reasonable cause was shown.

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 its burden of proof with respect to the issue of whether its failure to pay or remit purchasers' use 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 purchasers' use tax assessment issued against the Petitioner, for the period of June 1, 2003 through December 31, 2005, for tax of \$_____, interest of \$_____, and additions to tax of \$_____, totaling \$_____, must be and is hereby **AFFIRMED**.

Because Petitioner has previously remitted the tax and interest portions of this purchasers' use tax assessment, only the additions to tax in the amount of \$_____ remain due and owing to the State Tax Commissioner of West Virginia.