

REDACTED DECISION – DOCKET # 09-470 F – BY GEORGE V. PIPER, ALJ – SUBMITTED FOR DECISION on FEBRUARY 4, 2010 – ISSUED on FEBRUARY 22, 2010.

SYNOPSIS

BUSINESS REGISTRATION TAX -- CERTIFICATE REVOKED -- The repeated willful refusal or neglect to file state tax returns or to remit state taxes when due authorizes revocation of a registrant's business registration certificate, pursuant to the provisions of W.Va. Code § 11-12-5(b), as last amended. *See also* W. Va. Code § 11-10A-8(3) or (5), as last amended.

FINAL DECISION IN SHOW CAUSE PROCEEDING

On January 11, 2010 the Assistant Director of the Compliance Division of the West Virginia State Tax Commissioner's Office ("the Commissioner"), by his agent, personally served upon the representative clerk of Registrant, a "Notice of Intent to Revoke Business Registration Certificate," wherein the Commissioner gave notice that he intended to revoke the West Virginia business registration certificate of Registrant, effective February 24, 2010. The revocation notice was based on: Registrant's repeated failure to file consumers sales and service tax returns and to remit all reported consumers sales and service taxes collected from customers from June 2003 through June 2008; Registrant's repeated failure to file combined sales and use tax returns and to remit all combined sales and use taxes due from September 2008 through September 2009; and Registrant's failure to file withholding tax returns and pay withholding taxes due from June 2004 through September 2009. The notice indicated revocation would not occur if all delinquent state tax returns were filed and all taxes due the Commissioner were paid prior to February 4, 2010. That same Notice also informed Registrant that a "show cause" hearing was scheduled before this tribunal for Thursday, February 4, 2010 at 2:00 p.m., E.S.T., at which hearing Registrant would have the opportunity to show cause why its business registration certificate should not be revoked as proposed by the Commissioner.

At the scheduled show cause hearing the Commissioner showed that the Registrant owed at least \$____ of delinquent consumers sales and service tax, interest, and additions to tax; at least \$____ of delinquent combined sales and use tax, interest and additions to tax; and at least \$____ of delinquent withholding tax, interest, and additions to tax. The Commissioner further showed that Registrant had two unreleased tax liens, totaling \$____, filed against its business for unpaid consumers sales and service taxes and withholding taxes, which liens were on record in the County Clerk's Office of a county in West Virginia.

The revenue agent testified that Registrant had filed twenty-five of the delinquent tax returns the day prior to this proceeding; however none of the returns were paid. The revenue agent also testified that she worked with Registrant for three years to get his taxes current but Registrant repeatedly failed to pay the delinquent amounts.

The Registrant testified that he had a plan to make a significant down payment to be applied to his overall tax liability by December 2010. Registrant requested that the presiding administrative law judge stay the decision so that the Registrant could make this payment; however Registrant was informed that the business registration tax statute does not allow for such a stay unless the Commissioner agrees. Commissioner's counsel refused to agree to Registrant's request. See W.Va. Code § 11-12-5(b)(2).

Because the evidence shows that Registrant did repeatedly and willfully fail to file consumers sales and service tax, combined sales and use tax and withholding tax returns, and did repeatedly and willfully convert for its own personal use consumers sales and service tax, combined sales and use tax, and withholding tax that he collected on behalf of the State of West Virginia, this tribunal does hereby APPROVE the Commissioner's REVOCATION of Registrant's business registration certificate, effective February 26,

2010. See W. Va. Code § 11-12-5(b) (1) (D), as last amended; W. Va. Code § 11-10A-8(3) or (5), as last amended.