

**SYNOPSIS**

**CONSUMERS' SALES AND SERVICE TAX – BURDEN OF PROOF MET –**

An assessment of consumers' sales and service tax will be revised if Petitioner proves that a portion of the assessed tax has been remitted by another person to the State of West Virginia.

**ADMINISTRATIVE DECISION**

The Auditing Division issued a consumers' sales and service tax assessment against the Petitioner. This assessment was for the period of January 1, 1999 through December 31, 2001, for tax, interest, through December 31, 2001, and additions to tax.

Thereafter, the Petitioner timely filed a petition for reassessment.

**FACTS**

During the assessment period the Petitioner was engaged in the preparation and sale of soft drinks and retailed products. Petitioner also leases and/or sells fountain equipment to restaurant chains and similar type businesses located in West Virginia.

At the hearing Petitioner's counsel stated that almost all of the assessed tax is being held by a separate company and that said amount would be released shortly to be applied against Petitioner's outstanding tax amount.

Petitioner's representative testified that only one of its service provider did not bill the Petitioner for the sales tax with respect to the repair services, which it performed on Petitioner's behalf, and that Petitioner was legally responsible to pay same.

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2003 JUL 23 A 11:07

**FILED**

Division's representative testified that Petitioner paid the tax with respect to all of its service providers, except for Icee.

Division's counsel agreed, given the circumstances, to waive the additions to tax.

### **ISSUE AND DETERMINATION**

The sole issue is whether the Petitioner has shown that the assessment is incorrect and contrary to law, in whole or in part, as required by W. Va. Code § 11-10-9.

Upon receipt of the monies remitted by Consolidated it was determined that the same paid in full the liability owed by the Petitioner.

In this matter the Petitioner has shown that the assessment is erroneous.

**WHEREFORE**, it is the **DECISION** of the **STATE TAX COMMISSIONER OF WEST VIRGINIA** that the consumers' sales and service tax assessment issued against the Petitioner for the period of January 1, 1999 through December 31, 2001, should be and is hereby **ABATED**, and the Petitioner owes no further consumers' sales and service tax liability for the period in question.