

SYNOPSIS

CONSUMERS' SALES AND SERVICE AND PURCHASERS' USE TAX – REVISIONS UPHeld – Tribunal will, upon a proper showing made at hearing, consent to tax revisions and additions to tax waivers proposed by Commissioner's counsel.

FINAL DECISION

The Field Auditing Division of the Commissioner's Office issued a purchasers' use tax assessment against the Petitioner.

This assessment was for the period of January 1, 1999 through December 31, 2001, for tax and interest through November 30, 2002.

Written notice of this assessment was served on the Petitioner.

Also, the Auditing Division issued a consumers' sales and service tax assessment against the Petitioner, for the period of January 1, 1999 through December 31, 2001, for tax, interest through November 30, 2002, and additions to tax.

Written notice of this assessment was served on the Petitioner.

Thereafter, by mail, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment.

FINDINGS OF FACT

1. In its petitions for reassessment regarding both assessments, Petitioner requests that taxes already paid during the audit period be credited, thereby reducing said assessments.

2. Petitioner requests that upon being given credit for taxes paid that the interest on both assessments be recalculated.

3. With regard to the consumers' sales and service tax assessment, Petitioner states that a prior audit performed by the Department did not reveal any such assessment and that any failure to pay tax on a timely basis resulted from the death of its accountant as well as problems experienced in the hiring of new accountants.

FILED
JUL 23 A 11:05
OFFICE WEST VIRGINIA
SECRETARY OF STATE

DISCUSSION

The sole issue is whether the Petitioner has shown that the assessments are incorrect and contrary to law, in whole or in part. See W. Va. Code § 11-10A-10(e).

In this instance Commissioner's counsel agreed at the hearing that the purchasers' use tax assessment should be revised as prepared by the Petitioner and the additions to tax with respect to the consumers' sales and service tax assessment be waived.

Upon review, this tribunal concurs with Commissioner's counsel's request that the assessments will be revised accordingly.

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 carried the burden of proof with respect to the issues raised.

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 January 1, 1999 through November 30, 2002, should be and is hereby **MODIFIED** in accordance with the above Conclusion(s) of Law for tax and interest on the revised tax updated through June 30, 2003.

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, 1999 through December 31, 2001, for tax and interest, updated through June 30, 2003, should be and is hereby **AFFIRMED**; the additions to tax are, however, **VACATED** in full.