

**FILED**

2003 OCT 17 P 12:41

**SYNOPSIS**

**CONSUMERS' SALES AND SERVICE TAX -- ESTIMATED ASSESSMENT AFFIRMED WHEN TAXPAYER FAILS TO PROVE SAME INVALID** – The West Virginia Office of Tax Appeals will affirm an estimated assessment of consumers' sales and service tax when the taxpayer fails to submit any evidence that the estimated assessment, for failure to file returns and to remit tax, was incorrect or invalid, in whole or in part, see W. Va. Code § 11-10A-10(e) [2002], 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

OFFICE OF THE WEST VIRGINIA  
SECRETARY OF STATE

**FINAL DECISION**

The Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued an estimated consumers' sales and service tax assessment against the Petitioner. The assessment was for the periods of October through December, 2000 and May, 2001 through June, 2002, for estimated tax, interest, through January 15, 2003, and additions to tax (for failure to file tax returns and for failure to remit tax). Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked March 18, 2003, 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].

Subsequently, notice of a hearing on the petition was sent to the Petitioner in accordance with the provisions of W. Va. Code § 11-10A-10 [2002].

There was no appearance on behalf of the Petitioner when the hearing was convened. The hearing was held, however, without an appearance on behalf of the Petitioner, see W. Va. Code § 11-10A-10(a) [2002] and 121 C.S.R. 1, § 69.1 (Apr. 20, 2003).

At the request of the Petitioner's president made a short time before the hearing, the record in this case was left open for a period of one (1) week after the scheduled hearing date, in order to permit the Petitioner additional time to submit evidence as to the actual amount of taxable gross proceeds for the time periods at issue. As of the date that this Final Decision is issued, the taxpayer has not submitted such evidence to this tribunal.

### **FINDINGS OF FACT**

1. In its petition the taxpayer admits that it has not filed the monthly consumers' sales and service tax returns and has not remitted the tax for the periods in question, due to "several illnesses."

2. The taxpayer has not submitted any evidence to support its claim that the estimated assessment "grossly overstates" the Petitioner's actual taxable gross proceeds for the relevant months.

### **DISCUSSION**

The only issue presented for decision is whether the Petitioner has carried its burden of proof.

### **CONCLUSIONS OF LAW**

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) [2002].

2. The Petitioner-taxpayer in this matter has failed to carry the burden of

proof with respect to the issue of whether the estimated assessment exceeds the actual tax liability of the Petitioner for the periods in question. See 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

### **DISPOSITION**

**WHEREFORE**, it is 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 periods of October through December, 2000 and May, 2001 through June, 2002, for tax, interest, **updated** through September 30, 2003, and additions to tax, should be and is hereby **AFFIRMED**.