

SYNOPSIS

CONSUMERS’ SALES AND SERVICE TAX – ASSESSMENT REVISED –
Tax assessment will be revised in accordance with verified financial tax records submitted post hearing because acceptance of same proves that the tax assessment, as issued, is not correct, in whole or in part. See W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

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. This assessment was for the period ended December 1999 through September 30, 1997, for tax, interest, through March 15, 2003, and additions to tax.

Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked, May 6, 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, written 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].

At the conclusion of the hearing the administrative law judge ruled that the record be kept open for a period of twenty (20) days so that tax records in the possession of his ex-wife’s attorney could be obtained either voluntarily or by subpoena.

Subsequent thereto, said records were obtained by subpoena from Petitioner’s ex-wife’s attorney.

FINDINGS OF FACT

1. Petitioner failed to file returns and/or remit consumers' sales and service taxes due during the assessment period.
2. At hearing Petitioner testified that accurate tax records were presently in the hands of his ex-wife's divorce attorney.
3. Actual tax records were received from his ex-wife's divorce attorney via subpoena.

DISCUSSION

The sole issue is whether the Petitioner has shown that the estimated assessment is incorrect and contrary to law, in whole or in part, see W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

In this case, Petitioner's tax records supplied post hearing show that the tax assessment should be revised accordingly.

CONCLUSIONS 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) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).
2. The Petitioner-taxpayer in this matter has carried the burden of proof with respect to the issue of whether the estimated assessment should be revised to reflect actual tax figures.

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 period ended December, 1997 through September 30, 1999, should be and is hereby **MODIFIED** in accordance with the above Conclusions of Law for tax, interest, on the revised tax, updated through January 31, 2004, and additions to tax, for a total revised liability.

Interest continues to accrue on this unpaid consumers' sales and service tax at a daily rate until this particular tax liability is fully paid.