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SYNOPSIS

CONSUMERS' SALES AND SERVICE TAX -- LIABILITY OF CORPORATE OFFICER -- NOT LIABLE IF NO MANAGERIAL AUTHORITY -- For periods covered by the current, legislatively approved regulations which became effective on May 1, 1992, a person who is in fact an officer of a corporation is personally liable for the unpaid consumers' sales and service tax liability of the corporation by virtue of his or her status as an officer with any actual managerial authority, regardless of whether the officer had the authority to make or to supervise directly the day-to-day financial decisions on behalf of the corporation, and regardless of whether the officer knew of the corporation's default with respect to its consumers' sales and service tax obligations. See W. Va. Code § 11-15-17 [1978] and 110 C.S.R. 15, §§ 4a.5 & 4a.5.2 (May 1, 1992); see also W. Va. Code § 64-7-6(rr) [1992].

OFFICE OF THE SECRETARY OF STATE
WEST VIRGINIA

Accordingly, a person who was an officer of a corporation in name only, or a person who did not in fact have the responsibility of performing any managerial duties, is not personally liable, under W. Va. Code § 11-15-17 [1978] and the implementing regulations, for an unpaid consumers' sales and service tax liability of the corporation.

FINAL DECISION

The Accounts Monitoring Unit of the Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued a consumers' sales and service tax assessment against the Petitioner. This assessment was for most of the monthly periods between October, 1998 and September, 2002, for tax of \$, interest, through February 15, 2003, of \$, and additions to tax of \$ for a total assessed liability for this period of time.

Written notice of this assessment was served on the Petitioner.

Also, on February 15, 2003, the Commissioner issued another consumers' sales and service tax assessment against the Petitioner, as an officer of the corporation, under the provisions of Chapter 11, Articles 10 and 15 of the West Virginia Code. This assessment was for the monthly periods of May, 1997 through

September, 1998, for tax, interest, through February 15, 2003, and additions to tax for a total assessed liability for this period of time.

Written notice of this assessment was also served on the Petitioner.

Thereafter, by mail postmarked on or about April 11, 2003, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, petitions for reassessment.

FINDINGS OF FACT

1. During the time periods involved in the assessments, the Petitioner was listed in various official corporate records as the Secretary of the corporation.

2. The Petitioner ceased all involvement with the corporation near the end of March, 1996.

3. During the time periods in question, the Petitioner did not have any managerial authority, in fact, with respect to the corporation and was an officer in name only.

DISCUSSION

The only issue is whether the Petitioner is one of the corporate officers who is personally responsible for all or any portion of the unpaid consumers' sales and service tax liability of the corporation for the periods involved in the assessments of that tax in this matter.

For consumers' sales and service tax purposes, W. Va. Code § 11-15-17 [1978] provides that "[i]f the taxpayer is an association or corporation, the officers thereof shall be personally liable, jointly and severally, for any default on the part of the association or corporation" with respect to that tax.

Effective on and after May 1, 1992, the consumers' sales and service tax regulations follow the broad reach of W. Va. Code § 11-15-17 [1978] by basing corporate officer liability for unpaid corporate consumers' sales and service tax liability upon the corporate officer's status as a corporate officer, as long as that officer, during the assessment period(s), had any actual managerial authority on behalf of the corporation, that is, he or she was not merely an officer in name only. Under this approach, the precise duties or the breadth of the authority of the officer are not determinative. Also, corporate officer liability for the unpaid corporate consumers' sales and service tax liability is not dependent upon the corporate officer's knowledge of the corporation's default in filing such tax returns or in paying such taxes. The relevant portions of the current consumers' sales and service tax regulations provide:

Sec. 4a.5. The officers of a corporation or association that are personally liable for consumer[s] sales tax include any president, vice-president, secretary, or treasurer, and any other officers provided in the charter or bylaws of the corporation or association, and any person who is elected or appointed to any position with the authority of an officer, and who perform duties or responsibilities in the management of the corporation. The officers of an association include all members of its governing board and its trustees. A person such as an incorporator, shareholder, member or employee of a corporation or association is not considered to be an officer subject to a personal liability.

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Sec. 4a.5.2. An officer may be liable whether or not the officer was under a duty to pay the tax or was responsible for the payment of the tax, for or on behalf of the corporation or association, and whether or not the officer acted willfully, or with the intent to evade the tax or payment thereof.

110 C.S.R. 15, §§ 4a.5 & 4a.5.2 (May 1, 1992) (emphasis added). After reviewing these regulations, the Legislature approved them. See W. Va. Code § 64-7-6(rr) [1992].

In addition to the foregoing substantive law, the relevant procedural law is that, in a hearing on a petition for reassessment, the burden of proof is upon the person assessed 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].

CONCLUSIONS OF LAW

1. For periods covered by the current, legislatively approved consumers' sales and service tax regulations which became effective on May 1, 1992, a person who is in fact an officer of a corporation is personally liable for the unpaid consumers' sales and service tax liability of the corporation by virtue of his or her status as an officer with any actual managerial authority, regardless of whether the officer had the authority to make or to supervise directly the day-to-day financial decisions on behalf of the corporation, and regardless of whether the officer knew of the corporation's default with respect to its consumers sales and service tax obligations. See W. Va. Code § 11-15-17 [1978] and 110 C.S.R. 15, §§ 4a.5 & 4a.5.2 (May 1, 1992); see also W. Va. Code § 64-7-6(rr) [1992].

2. Being an officer in name only, during the periods in question, the Petitioner is not one of the corporate officers who is personally liable for all or any portion of the unpaid consumers' sales and service tax liability of the corporation for the periods involved in the assessments of that tax in this matter.

DISPOSITION

WHEREFORE, it is the **DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the two consumers' sales and service tax assessments issued against the Petitioner for the periods in question should be and are hereby **FULLY**

VACATED, and no consumers' sales and service tax is due from the Petitioner on behalf of this corporation for the periods in question.