

SYNOPSIS

BROAD-BASED HEALTH CARE PROVIDER TAX -- BURDEN OF PROOF NOT MET – Because Petitioner’s own documentation shows that no taxes were paid for the month in question, no showing has been made that the assessment is incorrect and contrary to law, in whole or in part, *see* W. Va. Code § 11-10A-10(e) [2002] and C.S.R. 1, § 63.1 (April 20, 2003).

FINAL DECISION

The Internal Auditing Division of the West Virginia State Tax Commissioner’s Office issued a broad-based health care provider tax assessment against the Petitioner. The assessment was for the month of May, 2003, for tax, interest, through November 15, 2003, and additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked November 21, 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 and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002] and 121 C.S.R. 1, § 61.3.3 (Apr. 20, 2003).

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).

FINDINGS OF FACT

1. Petitioner's documentation filed with its petition for reassessment showed that no broad-based health care provider taxes were paid for May, 2003.
2. Petitioner has a history of late tax payments regarding said tax.

DISCUSSION

The sole issue is whether the Petitioner has shown 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).

Because Petitioner did not appear in support of its petition for reassessment, this tribunal reviewed to the petition itself and found that it showed no remittance of tax for the month of May, 2003. This revelation, coupled with the fact that Petitioner's tax reporting has been spotty at best, leaves no alternative but to uphold the assessment in toto.

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 refund, 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 failed to carry the burden of proof with respect to the issue raised.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the broad-based health care provider tax assessment issued against the Petitioner for the month of May, 2003, for tax, interest, and additions to tax, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002], **interest accrues** on this broad-based health care provider tax assessment, until this liability is fully paid.