

SYNOPSIS

WITHHOLDING TAX -- TAXPAYER’S FAILURE TO CARRY BURDEN OF PROOF – The failure of the taxpayer to articulate adequate grounds in its petition for refund justifying its claim, combined with its failure to appear at a hearing and to present any evidence respecting its claim, will result in a denial of relief to the taxpayer. *See* W. Va. Code § 11-10A-10(e) [2002]; 121 C.S.R. 1, §§ 63.1 and 69.2 (Apr. 20, 2003).

FINAL DECISION

On November 15, 2003, the Accounts Monitoring Unit of the Internal Auditing Division the Compliance Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) issued a withholding tax assessment against the Petitioner. The assessment was for the years 2002 and 2003, for tax, interest, computed through November 15, 2003, and additions to tax, for a total assessed tax liability. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked December 29, 2003, received on January 9, 2004, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. With its petition for reassessment, the Petitioner remitted full payment of the assessment, under protest. Accordingly, the petition for reassessment has been converted to a petition for refund, under the provisions of W. Va. Code § 11-10-8(c) [2002].

Subsequently, notice of a hearing on the petition was sent to the Petitioner at the address set forth in its petition, and a hearing was held 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 or the

Commissioner, in accordance with the provisions of W. Va. Code § 11-10A-10(a) [2002] and 121 C.S.R. 1, § 69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. In its petition for refund, the Petitioner asserts that the assessment is contrary to the law and the evidence, and that it violates the Petitioner's right to procedural and substantive due process.
2. The grounds articulated by the Petitioner are inadequate to show that the assessment is erroneous, unlawful, void or otherwise invalid.
3. The Petitioner was provided with notice that a representative acting on its behalf was required to appear at a prehearing conference for the purpose of establishing and narrowing the issues to be heard. The Petitioner failed to appear at the time and place of the scheduled prehearing conference.
4. The Petitioner was also given notice that it or a representative acting on its behalf was required to appear at an evidentiary hearing and present evidence respecting the reasons it believed that the assessment was erroneous, unlawful, void or otherwise invalid.
5. No representative of the Petitioner appeared at the time and place of the hearing and no evidence was presented respecting any of the Petitioner's allegations.

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 petitions for reassessment and petitions for refund, the burden of proof is upon the Petitioners to show that

any assessment of tax against him is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code § 11-10A-10(e) [2002]; 121 C.S.R. 1, §§ 63.1 and 69.2 (Apr. 20, 2003).

2. The Petitioner in this matter has failed to carry its burden of proving that any assessment of taxes against him is erroneous, unlawful, void or otherwise invalid.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the tax assessment issued against the Petitioner for the years 2002 and 2003, for tax, interest, computed through November 15, 2003, and additions to tax, for a total assessed tax liability, should be and is hereby **AFFIRMED**.

It is also the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the Petitioner's petition for refund should be and is hereby **DENIED**.

APPEAL PROCEDURES

If an aggrieved party wishes to appeal this Final Decision to an appropriate West Virginia circuit court, W. Va. Code § 11-10A-19(a), as last amended, requires that such appeal be filed within sixty (60) days after the date of service of this Final Decision upon the party. W. Va. Code § 11-10A-19, as last amended, outlines the procedure for the appeal to circuit court (an appeal petition filing fee is normally required), including, in most cases, the filing of an appeal bond by a taxpayer. Under W. Va. Code § 11-10A-19(b), as last amended, the West Virginia Office of Tax Appeals (or one or more of its administrative law judges), as a totally independent, quasi-judicial tribunal, is not a party to the appeal and is not to be made a party to the appeal.

On the other hand, under W. Va. Code § 11-10A-19(f), as last amended, and under W. Va. Code § 29A-5-4(b), as last amended, to provide the record to the circuit court, the **appellant**

to the circuit court is to provide the West Virginia Office of Tax Appeals (as well as the other party to the appeal, that is, the State Tax Commissioner's Office or the Taxpayer) with a certified copy of the filed petition for appeal (showing the circuit court in which the petition was filed, the date filed, and the "civil action number" for the appeal from an administrative agency), along with a certified copy of any order filing the petition or of any other initial process document setting forth the directives of the court with respect to processing the appeal.

Within fifteen (15) days after receipt of this written notice of the appeal, or within such further time as the circuit court may allow, the West Virginia Office of Tax Appeals, pursuant to the provisions of W. Va. Code § 29A-5-4(d), as last amended, will prepare and transmit to the circuit court a certified copy of the entire record in the matter.

As set forth in W. Va. Code § 11-10A-14(c) [2002] and 121 C.S.R. 1, § 86 (Apr. 20, 2003) (Rules of Practice and Procedure before the West Virginia Office of Tax Appeals), the West Virginia Office of Tax Appeals will: (1) send to the parties a detailed index of the record at the same time it transmits to the circuit court a certified copy of the entire record, § 86.4; (2) at the same time send to the appellant(s) a bill (payable to the "State of West Virginia"), due within twenty (20) calendar days, for the reasonable costs of preparing the record, § 86.3; and (3) upon payment of such record preparation costs, send to the parties a certified copy of the entire record.