SANITIZED DEC. – 01-611 C – BY – GEORGE V. PIPER – ISSUED – 02/14/03

SYNOPSIS

CONSUMERS' SALES AND SERVICE TAX – BURDEN OF PROOF NOT MET– Failure of the Petitioner to prove that the assessment is incorrect and contrary to law, in whole or in part, as required by W. Va. Code § 11-10-9, mandates that the assessment be upheld.

ADMINISTRATIVE DECISION

The Auditing Division issued a consumers' sales and service tax assessment against the Petitioner. This assessment was for the period of January 1, 1998 through December 31, 2000, for tax, interest, through December 31, 2000, and additions to tax.

Thereafter, the Petitioner timely filed a petition for reassessment by mail.

FACTS

During the assessment period the operated a retail jewelry store.

The audit findings reflected that during the assessment period Petitioner collected sales tax but did not remit same as required by law.

Petitioner also under collected sales tax during said period.

At the hearing the Petitioner testified that a former employee was being indicted by one of the County prosecutors for absconding with the collected sales tax. Petitioner also admitted using two (2) sets of books when determining taxable sales.

ISSUE AND DETERMINATION

The sole issue is whether the Petitioner has shown that the assessment is incorrect and contrary to law, in whole or in part as required by W. Va. Code § 11-10-9.

The answer is clearly "no," regardless of whether some alleged wrongdoing occurred by one of its employees, because the record is clear that tax was not collected on some transactions, tax was not remitted on other transactions, and further because Petitioner admitted that it kept two (2) sets of books, one from which tax was collected and one from which it was not.

In a hearing on a petition for reassessment, the burden of proof is upon the taxpayer to show that the assessment is incorrect and contrary to law, in whole or in part. In this matter the Petitioner failed to show the same.

WHEREFORE, it is the **DECISION** of the **STATE TAX COMMISSIONER OF WEST VIRGINIA** that the consumers' sales and service tax assessment issued against the Petitioner for the period of January 1, 1998 through December 31, 2000, should be and is hereby **AFFIRMED** as to the tax and interest, updated through January 31, 2003; the **ADDITIONS** to tax are, however, **WAIVED** in full.