

ADMINISTRATIVE DECISION

The Auditing Division issued a consumers' sales and service tax assessment against the Petitioner. This assessment was for the period of June 1, 1998 through June 30, 2001, for tax, interest, through June 30, 2001, and additions to tax.

FACTS AND PROCEDURAL BACKGROUND

During the audit period Petitioner was engaged in the business of leasing automobiles, heavy equipment, trucks, golf carts, and various other mechanical and non-mechanical equipment.

At the initial hearing, Division's counsel stated that the assessment was estimated because the tax auditor was not provided with sufficient information to complete the audit. In response Petitioner's counsel posited that his investigation revealed that a personality conflict had arisen between the tax auditor and whoever was to supply the documentation for the Petitioner. Petitioner's counsel asked leave to supply the necessary information to the audit supervisor. Whereupon at the direction of the administrative law judge, counsel for both parties agreed to the following timeline pertaining to the submission of evidence.

- (1) A West Virginia computer run of all lease transactions for the period July 1, 2000 through June 30, 2001 would be made available to the Division within thirty (30) days.
- (2) In conjunction with the submission of the aforesaid computerized statement, or as soon thereafter as possible, the Petitioner would also supply proof in support of its contention that certain of its lease transactions were tax exempt, either by way of direct pay permits, exemption certificates, etc.
- (3) Counsel for both sides will meet either in person or be in contact by telephone no later than thirty (30) days from the hearing date to evaluate the submission of evidence to date and advise the administrative law judge accordingly.

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- (4) Should Petitioner's counsel determine that the July 1, 2000 to June 30, 2001 sample period for the submission of evidence is not representative of Petitioner's business, his statement of same must be communicated to the administrative law judge within ten (10) days of the hearing and a different period will be selected by the parties.
- (5) Should additions to tax be reimposed by Division's counsel after the reaudit is completed, both parties will be allowed additional time in which to submit written argument, either in support of same or to waive same.

The hearing was then continued for a period of at least sixty (60) days for the taking of additional evidence.

On or about December 1, 2002, the administrative law judge was informed by the parties that, because certain of the requested lease agreement had been lost, an impasse had occurred.

To avoid any further delay the administrative law judge informed both sides that should it be necessary, substitute leases of the same type must be submitted and that the same must be immediately delivered to the audit supervisor for his review prior to the reconvened hearing.

On or about December 12, 2002, it was made known to this tribunal that a number of the leases, which were purported to be lost, had in fact been found and that the same along with certain other lease agreements had been supplied to Division's audit supervisor as directed by the administrative law judge.

At the reconvened hearing, Division's counsel conceded that the lease agreements, although not provided in a timely fashion, were in fact representative of financing documents, which were not subject to sales tax.

ISSUES AND DETERMINATIONS

The sole issue for determination 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.

Although it took repeated attempts by this tribunal to obtain the necessary exculpatory information, the fact remains that, when provided, the same conclusively proved that the assessment was incorrect and required revision.

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 June 1, 1998 through June 30, 2001, should be and is hereby **ABATED** and the Petitioner owes no further consumers' sales and service tax liability for the period in question.