

**SYNOPSIS**

**CONSUMERS' SALES AND SERVICE TAX – BURDEN OF PROOF NOT MET** – Failure of the Petitioner to appear or otherwise prove by clear and convincing evidence 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 same be upheld in toto.

**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 August 31, 2001, for tax, interest through August 31, 2001, and no additions to tax, for a total assessed liability.

Thereafter, the Petitioner timely filed a petition for reassessment.

A hearing on the petition was scheduled and the Petitioner received notice of the hearing. 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, in accordance with the provisions of W. Va. Code § 11-10-9.

**FACTS**

During the assessment period the Petitioner was engaged in the business of manufacturing for sale advertising signs and posters.

Petitioner ships its products to its West Virginia customers by the United Parcel Service. Petitioner charges and collects tax on the sales price but does not collect said tax on the shipping and handling charges. Its customers did not pay sales tax on the shipping and handling charges in connection with sales.

In its petition for reassessment Petitioner disputes that sampling method employed by the tax auditor in calculating the tax assessment.

**FILED**  
2003 JUL 23 A 11: 02  
OFFICE WEST VIRGINIA  
SECRETARY OF STATE

## 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.

In this case Petitioner failed to appear or otherwise prove that the assessment was incorrect, in whole or in part.

Accordingly, it is **DETERMINED** that the Petitioner has failed to carry the burden of proof with respect with this issue.

**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 August 31, 2001, for tax and interest, updated through January 31, 2003, should be and is hereby **AFFIRMED**.