

**SANITIZED DECISION – 06-486 C – BY GEORGE V. PIPER, ALJ – SUBMITTED  
for DECISION on NOVEMBER 28, 2006 – ISSUED on DECEMBER 12, 2006**

**SYNOPSIS**

**CONSUMERS’ SALES AND SERVICE TAX – TAXPAYER’S FAILURE TO CARRY BURDEN OF PROOF** – The taxpayer’s failure to appear at hearing or to otherwise present any evidence respecting the claim set forth in its petition for reassessment will result in a denial of relief to the taxpayer. *See* W.Va. Code § 11-10A-10(e) [2002]; W.Va. Code St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

**FINAL DECISION**

On August 15, 2006, the Accounts Monitoring Unit of the Internal Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) issued a consumers’ sales and service tax assessment against the Petitioner. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 15 of the West Virginia Code. The assessment was for the period of January 1, 2005 through May 31, 2005, for tax of \$, interest, through August 15, 2006, of \$, and additions to tax of \$, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioner as required by law.

Also on August 15, 2006, the Commissioner (by the Division) issued a consumer’s sales and service tax assessment against the Petitioner, under the provisions of Chapter 11, Articles 10 and 15 of the West Virginia Code, for the period of October 1, 2005 through October 31, 2005 for tax of \$, interest, through August 15, 2006 of \$, and additions to tax of \$, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioner as required by law.

Thereafter, by mail postmarked April 12, 2006, 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] and 11-10A-9(a)-(b) [2005].

Subsequently, notice of a hearing on the petition was sent to the parties and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002] and W.Va. Code St. R. § 121-1-61.3.3 (Apr. 20, 2003).

### **FINDINGS OF FACT**

1. In its petition for reassessment, Petitioner argued that it should not have collected consumer's sales and service tax concerning an extended equipment lease and that the interest and additions to tax should therefore be waived.

2. At the hearing Respondent's counsel argued that all of Petitioner's consumer's sales and service tax returns which were filed during both assessment periods were filed late, which gave rise to the interest and additions to tax being assessed.

### **DISCUSSION**

The only issue is whether the Petitioner has shown that the assessment is erroneous or otherwise invalid.

In this case, Petitioner provided absolutely no evidence proving that the consumer's sales and service tax returns were not filed late.

### **CONCLUSIONS OF LAW**

Based upon all of the above it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon a Petitioner 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 W.Va. Code St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

2. The Petitioner in this matter has failed to carry its burden of proving that the assessments of interest and additions to tax are erroneous, unlawful, void, or otherwise invalid.

### **DISPOSITION**

**WHEREFORE**, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the consumers' sales and service tax assessment issued against the Petitioner for the period of January 1, 2005 through May 31, 2005, for tax of \$, interest of \$, and additions to tax of \$, **totaling \$**, should be and is hereby **AFFIRMED**.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the consumer's sales and service tax assessment issued against the Petitioner for the period of May 1, 2005 through May 31, 2005, for the tax of \$, interest of \$ and additions to tax of \$, **totaling \$**, should be and is hereby **AFFIRMED**.