

**REDACTED DECISION -- 08-174 F -- BY GEORGE V. PIPER, ALJ --
SUBMITTED for DECISION on SEPTEMBER 29, 2008 -- ISSUED on OCTOBER
1, 2008**

SYNOPSIS

**BUSINESS REGISTRATION TAX -- CERTIFICATE REVOKED
(CANCELLED)** -- The repeated willful refusal or neglect to file state tax returns or to remit state taxes when due authorizes revocation (cancellation) of a registrant's business registration certificate, pursuant to the provisions of W.Va. Code § 11-12-5(b), as last amended. *See also* W. Va. Code § 11-10A-8(3) or (5), as last amended.

FINAL DECISION

IN SHOW CAUSE PROCEEDING

On July 29, 2008, the Regional Supervisor of the Compliance "Division" of the West Virginia State Tax Commissioner's Office ("the Commissioner"), by his agent, personally served upon the Registrant's agent, a "Notice of Intent to Revoke Business Registration Certificate," wherein the Commissioner gave notice that he intended to revoke (cancel) the Registrant's, West Virginia business registration certificate, effective September 16, 2008, because of Registrant's repeated failures to file monthly consumers' sales and service tax returns and to remit all of the reported consumers' sales and service tax collected from customers for almost eleven (11) years, and because of Registrant's repeated failures to file monthly withholding tax returns and remit all of the reported withholding taxes due for eleven (11) years, unless all delinquent state tax returns were filed and all taxes due the Commissioner were paid prior to August 26, 2008. That same Notice also informed the Registrant that a "show cause" hearing was scheduled before this tribunal for Monday, September 29, 2008 at 1:30 p.m., E.D.T., at which hearing the

Registrant would have the opportunity to show cause why his business registration certificate should not be revoked (cancelled) as proposed by the Commissioner.

At the scheduled show cause hearing the Commissioner showed that the Registrant owed at least \$_____ of delinquent consumer's sales and service tax, interest, and additions to tax, and at least \$_____ of delinquent withholding tax, interest and additions to tax based upon returns filed by the Registrant. The Commissioner further showed that the Registrant had twenty-nine (29) tax liens filed against his business for unpaid consumers' sales and service taxes and withholding taxes for the years 1997 through 2007.

In response Registrant testified that he always intended to remit the taxes to the State of West Virginia, as required by law, but chose instead to use the taxes to pay the utility bills as well as the other expenses which continuously arose as a result of his operation of the business.

Because the evidence shows that the Registrant did repeatedly and willfully fail to file consumers' sales and service tax and withholding tax returns over the course of eleven (11) years and did repeatedly willfully convert for his own personal use consumers' sales and service tax and withholding tax that he collected on behalf of the State of West Virginia, this tribunal does hereby **APPROVE** the Commissioner's **REVOCATION (CANCELLATION)** of the **REGISTRANT'S BUSINESS REGISTRATION CERTIFICATE, EFFECTIVE OCTOBER 1, 2008**. See W. Va. Code § 11-12-5(b)(1)(D), as last amended; W. Va. Code § 11-10A-8(3) or (5), as last amended.