

REDACTED DECISION – DOCKET # 09-028 F – BY GEORGE V. PIPER, ALJ – SUBMITTED FOR DECISION on MARCH 2, 2009 – ISSUED on MARCH 18, 2009.

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 January 30, 2009, 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 Registrant's West Virginia business registration certificate, effective March 23, 2009. The revocation notice was based on Registrant's repeated failure to remit all reported consumers sales and service tax collected from customers for almost five (5) years, on Registrant's repeated failure to file combined sales and use tax returns and to remit all combined sales and use taxes due for eight (8) months, and on Registrant's repeated failures to file a withholding tax return and pay withholding taxes due for eleven (11) years. The notice indicated revocation would not occur if all delinquent state tax returns were filed and all taxes due the Commissioner were paid prior to March 2, 2009. That same Notice also informed the Registrant that a "show cause" hearing was scheduled before this tribunal for Monday, March 2, 2009, at 11:30 a.m., E.S.T., at which

hearing the Registrant would have the opportunity to show cause why its business registration certificate should not be revoked as proposed by the Commissioner.

At the scheduled show cause hearing the Commissioner showed that the Registrant owed at least \$_____ of delinquent consumers sales and service tax, interest, and additions to tax; and at least \$_____ of delinquent combined sales and use tax, interest and additions to tax; and at least \$_____ of delinquent withholding tax, interest, and additions to tax. The Commissioner further showed that the Registrant had twenty-three unreleased tax liens, totaling \$_____, filed against its business for unpaid consumers sales and service taxes, combined sales and use taxes, and withholding taxes, which were on record in the County Clerk's Office of Kanawha County, West Virginia.

The Registrant testified that he agreed that he owed all of the delinquent amounts and that he had wrongly paid the company's bills with the trust taxes which he collected on behalf of the State of West Virginia. He asked for leniency because of the recession which had adversely affected his business.

Because the evidence shows that the Registrant did repeatedly and willfully fail to file combined sales and use tax and withholding tax returns, and did repeatedly and willfully convert for his own personal use consumers sales and service tax, combined sales and use tax, and withholding tax that he collected on behalf of the State of West Virginia, this tribunal does hereby APPROVE the Commissioner's REVOCATION of the REGISTRANT'S BUSINESS REGISTRATION CERTIFICATE, EFFECTIVE MARCH 23, 2009. 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.