

SYNOPSIS

SEVERANCE TAX – REASONABLE CAUSE SHOWN FOR WAIVER OF ADDITIONS TO TAX – Because of the complexity of the audit concerning the valuation of limestone at the pit, a showing was made that the failure to properly remit taxes due resulted from sufficient “reasonable cause” and not due to willful neglect, pursuant to W. Va. Code § 11-10A-18(a)(1)-(2).

FINAL DECISION

A Tax Examiner with the Field Auditing Division (the “Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner”) conducted an audit of the books and records of the Petitioner. Thereafter, on September 20, 2002, The Director of the Field Auditing Division of the Commissioner’s Office issued a severance tax assessment against the Petitioner. This assessment was for the period of January 1, 1999 through December 31, 2001, for tax, interest, through July 31, 2002, and additions to tax.

Written notice of this assessment was served on the Petitioner on September 24, 2002.

Thereafter, by mail postmarked October 16, 2003, the Petitioner timely filed with this tribunal a petition for reassessment. See W. Va. Code § 11-10A-8(1) [2002].

FINDINGS OF FACT

1. The Petitioner is engaged in the business of coal and limestone production.
2. The issue which the Petitioner contested but later conceded at hearing concerned the methodology used by the tax auditor in determining the value of produced limestone at the pit or mine site.

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3. The tax auditor used a cost method in determining said value of produced limestone.

DISCUSSION

The sole issue is whether the Petitioner made a sufficient showing that its failure to pay taxes due resulted from "reasonable cause" and not due to willful neglect, as required by W. Va. Code § 11-10A-8(a)(1)-(2).

In this case it is clear that Petitioner misunderstood the directions given to him during a prior audit and that the cost methodology used by the tax auditor in conducting this audit was indeed complex.

CONCLUSIONS OF LAW

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

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment the burden of proof is upon the petitioner-taxpayer to show that the assessment is incorrect and contrary to law, in whole or in part. See W. Va. Code § 11-10A-10(e) and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

2. The petitioner-taxpayer in this matter has carried the burden of proof with respect to the issue of whether its failure to report the production value of limestone resulted from "reasonable cause" and not due to willful neglect.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the severance tax assessment issued against the Petitioner for the period of January 1, 1999 through December 31, 2001, should be and is hereby **AFFIRMED** as to the **tax** and **interest**, updated through November 30, 2003,; the **ADDITIONS** to tax are, however, **VACATED** in full.