

SYNOPSIS

CONSUMERS' SALES AND SERVICE TAX -- OFFICER LIABILITY -- BURDEN OF PROOF MET -- Petitioner who was not a director, officer or manager of the business during the assessment period may not be held personally liable for the consumers' sales and service tax debt of the corporation.

FINAL DECISION

The Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued an estimated consumers' sales and service tax assessment against the Petitioner, an individual as officer of the company.

This assessment was for the period of May 1, 2000 through May 30, 2001, for tax, interest, through December 15, 2002, and additions to tax.

Thereafter, by mail, 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].

FINDINGS OF FACT

During the assessment period Petitioner's only connection with the corporate business was as a shareholder, although she testified that she never received a stock certificate and never received any dividends.

DISCUSSION

The sole issue is whether the Petitioner has shown that the assessment is incorrect and contrary to law, in whole or in part, see W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

Although Petitioner admitted that she agreed to be a director after the assessment period, the record is clear that she had absolutely nothing to do with the

business during the period in question other than as a shareholder, and she was issued no stock and received no dividends or anything else that could in anyway be considered compensation.

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) [2002] and 121 C.S.R. 1, § 63.1 (April 20, 2003).
2. The Petitioner-taxpayer in this matter has carried the burden of proof.

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 May 1, 2000 through May 30, 2001, should be and is hereby **VACATED**, and the Petitioner personally owes no consumers' sales and service tax liability of the corporation for the period in question.