

**SANITIZED DECS. – 03-234 FS, 03-235 U, 03-236 W & 03-237 HP – BY
GEORGE V. PIPER – ISSUED – 08/28/03 – SUBMITTED FOR DECISION –
08/05/03**

FILED
2003 SEP 11 P 12:35

SYNOPSIS

**BROAD-BASED HEALTH CARE PROVIDER TAX AND WITHHOLDING
TAX – BURDEN OF PROOF MET IN PART** – Estimated assessments will be revised if the Petitioner can, upon verification, prove that actual income figures should be used in lieu of estimates.

FINAL DECISION

The Director of the Field auditing Division of the Commissioner's Office issued a business registration tax assessment against the Petitioner.

This assessment was for the period of July 1, 1998 through June 30, 2003, for tax, interest, through June 30, 2003, and additions to tax, for a total assessed liability.

Written notice of this assessment was served on the Petitioner on February 10, 2003.

Also, on February 4, 2003, the Commissioner issued a purchasers' use tax assessment against the Petitioner, under the provisions of Chapter 11, Articles 10 and 15A of the West Virginia Code, for the period of January 1, 1998 through December 31, 2002, for tax, interest, through December 31, 2002, and additions to tax, for a total assessed liability.

Written notice of this assessment was served on the Petitioner on February 10, 2003.

Also, on February 4, 2003, the Commissioner issued a withholding tax assessment against the Petitioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code, for the period of January 1, 2000 through

December 31, 2001, for tax, interest, through December 31, 2001, and additions to tax, for a total assessed liability.

Written notice of this assessment was served on the Petitioner on February 10, 2003.

Also, on February 4, 2003, the Commissioner issued a broad-based health care related tax assessment against the Petitioner, under the provisions of Chapter 11, Articles 10 and 27 of the West Virginia Code, for the period of January 1, 1998 through December 31, 2001, for tax, interest, through December 31, 2001, and additions to tax, for a total assessed liability.

Written notice of this assessment was served on the Petitioner on February 10, 2003.

Thereafter, by mail postmarked, March 28, 2003, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, petitions for reassessment.

At the conclusion of the administrative hearing, the administrative law judge ruled that the record would be left open for a period of thirty (30) days so that the tax examiner could review the tax records presented by Petitioner's representative, as well as to review the extent of any tax filings made under a different name.

FINDINGS OF FACT

1. The re-examination results were accepted by the Tax Commissioner in lieu of the estimates for both the broad-based health care related tax and withholding tax assessments.

2. The business registration tax and purchasers' use tax assessments were not contested by the Petitioner.

3. All four (4) assessments were made by the Tax Commissioner because the Petitioner failed to make his tax records available for examination.

DISCUSSION

The sole issue is whether the Petitioner has shown that the estimated assessments in controversy were incorrect and contrary to law, in whole or in part, as required by W. Va. Code § 11-10A-10(e).

Upon re-examination, it was determined that the estimated broad-based health care provider tax assessment and withholding tax assessment should be revised in accordance with the findings of the tax auditor.

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 assessments are incorrect and contrary to law, in whole or in part. See W. Va. Code § 11-10A-10(e).
2. The petitioner-taxpayer in this matter has carried the burden of proof with respect to the broad-based health care related tax and withholding tax assessments.
3. On the other hand, the Petitioner failed to carry the burden of proof with respect to the business registration and purchasers' use tax assessments.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the business registration tax assessment issued against the Petitioner for the period of July 1, 1998 through June 30, 2003, for tax, interest, updated through August 31, 2003, and additions to tax, should be and is hereby **AFFIRMED**.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the purchasers' use tax assessment issued against the Petitioner for

the period of January 1, 1998 through December 31, 2002, for tax, interest, updated through August 31, 2003, and additions to tax, should be and is hereby **AFFIRMED**.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the broad-based health care related tax assessment issued against the Petitioner for the period of January 1, 1998 through December 31, 2001, should be and is hereby **MODIFIED** in accordance with the above Conclusions of Law for tax, interest, on the revised tax, updated through August 31, 2003, and additions to tax, for a total revised liability.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the withholding tax assessment issued against the Petitioner for the period of January 1, 2000 through December 31, 2001, should be and is hereby **MODIFIED** in accordance with the above Conclusions of Law for tax, interest, on the revised tax, updated through August 31, 2003, and additions to tax, for a total revised liability.