

FILED

SYNOPSIS 2003 NOV 14 P 3:11

WITHHOLDING TAX AND CONSUMERS' SALES AND SERVICE TAX – TAXPAYER'S FAILURE TO CARRY BURDEN OF PROOF – The failure of the taxpayer to articulate any grounds in its petition for reassessment justifying its claim, combined with its failure to appear at a hearing and to present any evidence respecting its claim, will result in a denial of relief to the taxpayer. *See* W. Va. Code § 11-10A-10(e) [2002]; 121 C.S.R. 1, §§ 63.1 and 69.2 (Apr. 20, 2003).

FINAL DECISION

On March 15, 2003, the Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued an estimated assessment for withholding tax against the Petitioner. The assessment was for the period of February, 2001, through December, 2001, for tax, interest, computed through March 15, 2003, and additions to tax, for a total assessed tax liability. Also, on March 15, 2003, the Internal Auditing Division issued an estimated consumers' sales and service tax assessment against the Petitioner, under the provisions of Chapter 11, Articles 10 and 15 of the West Virginia Code, for the period of February, 2001, through December, 2001, for tax, interest, computed through March 15, 2003, and additions to tax, for a total assessed tax liability.

Thereafter, by two separate mailings, each postmarked April 29, 2003, and received on May 1, 2003, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment.

Subsequently, notice of a hearing on the petition was sent to the Petitioner, via certified mail, return receipt requested. The notice of hearing was returned unclaimed.

There was no appearance on behalf of the Petitioner when the hearing was convened. The hearing was held, however, without an appearance on behalf of the Petitioner, in accordance

with the provisions of W. Va. Code § 11-10A-10(a) [2002] and 121 C.S.R. 1, §§ 61.3.3 and 69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. Other than its name, there is nothing in the record to indicate the type of business operated by the Petitioner.

2. In its petition for reassessment, the Petitioner did not articulate any grounds upon which the West Virginia Office of Tax Appeals could possibly determine that the estimated withholding tax assessment or the estimated consumers' sales and service tax assessment is incorrect, void, unlawful or otherwise invalid, either in whole or in part.

3. The Petitioner has not presented any evidence that would show that either the estimated withholding tax assessment or the estimated consumers' sales and service tax assessment issued by the State Tax Commissioner was incorrect, either in whole or in part.

DISCUSSION

The issue in this matter is whether the Petitioner has satisfied its burden of showing that either of the estimated assessments is incorrect. With respect to a petition for reassessment, the burden of proof is on the Petitioner to show that the assessment is incorrect, either in whole or in part. W. Va. Code § 11-10A-10(e); and 121 C.S.R. 1, §§ 63.1 & 69.2.

The Petitioner has presented no evidence which shows the amounts that it actually withheld from its employees for personal income tax, or the amounts that it actually collected from its customers as consumers' sales and service tax. Consequently, there is no evidence in the record which proves that the estimated assessments issued by the Internal Auditing Division were incorrect, void, unlawful or otherwise invalid, either in whole or in part. Under these circumstances, this Office is required to affirm the assessments.

CONCLUSION(S) 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. See W. Va. Code § 11-10A-10(e) [2002]; and 121 C.S.R. 1, §§ 63.1 & 69.2 (Apr. 20, 2003).
2. The petitioner-taxpayer in this matter has failed to carry its burden of showing that the assessment is incorrect, void, unlawful or otherwise invalid.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the estimated assessment for withholding tax issued against the Petitioner for the year period of February, 2001, through December, 2001, for tax, interest, updated through November 1, 2003, and additions to tax, for a total assessed tax liability, should be and is hereby **AFFIRMED**.