

**SYNOPSIS**

**CONSUMERS' SALES AND SERVICE TAX AND PURCHASERS' USE TAX – BURDEN OF PROOF NOT MET** – Petitioner's failure to appear at hearing or to otherwise produce evidence that it was exempt from both assessments because of the nature of its business mandates that assessments be upheld in toto.

**FINAL DECISION**

The Field Auditing Division of the West Virginia State Tax Commissioner's Office conducted an audit of the books and records of the Petitioner.

The Director of this Division of the Commissioner's Office issued a consumers' sales and service tax assessment against the Petitioner.

This assessment was for the period of January 1, 1998 through December 31, 2000, for tax and interest, through June 30, 2001.

Written notice of this assessment was served on the Petitioner.

Also, on July 13, 2001, 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, 2000, for tax and interest, through June 30, 2001.

Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked, September 14, 2001 the Petitioner timely filed petitions for reassessment.

A hearing on the petitions was scheduled, and the Petitioner received notice of the hearing. After waiting for about thirty (30) minutes after the scheduled starting time for the hearing, this tribunal noted that no one had appeared 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).

### **FINDINGS OF FACT**

1. Petitioner is a manufacturer and installer of precast concrete structures such as parking garages.

2. The consumers' sales and service tax assessment resulted from Petitioner's failure to charge and collect sales tax on sales of precast products to contractors located in the State of West Virginia when the Petitioner was not responsible for either the installation or erection of said products.

3. The purchasers' use tax assessment was the result of Petitioner's failure to remit tax on the gross value of manufactured products, which it installed in its own contracting activities.

### **DISCUSSION**

The sole issue is whether the Petitioner has shown that one or both of the assessments are incorrect and contrary to law, in whole or in part, see by W. Va. Code § 11-10-A-10(e).

In this case Petitioner refused or otherwise failed to appear in support of its petitions for reassessment or to submit any evidence in support thereof, thereby mandating that the assessments be upheld in toto.

### **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 and contrary to law, in whole or in part.
2. The Petitioner-taxpayer in this matter has failed to carry 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 January 1, 1998 through December 31, 2000, for tax and interest, updated through July 31, 2003, 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, 2000, for tax and interest, updated through July 31, 2003, is hereby **AFFIRMED**.