

**SYNOPSIS**

**PURCHASERS' USE TAX – BURDEN OF PROOF NOT MET** – Because Petitioner failed to submit the requested legal memorandum in support of its argument that the purchase of a cleaning machine was tax exempt, the assessment was upheld in toto; no showing was made that the assessment is incorrect and contrary to law, in whole or in part. See W. Va. Code § 11-10A-10(e).

**ADMINISTRATIVE DECISION**

The Auditing Division of the Commissioner's Office issued a purchasers' use tax assessment against the Petitioner. This assessment was for the period of October 1, 1996 through September 30, 2001, for tax, interest, through November 30, 2001. Written notice of this assessment was served on the Petitioner.

Thereafter, the Petitioner timely filed a petition for reassessment.

**FINDINGS OF FACT**

1. During the assessment period the Petitioner operated a dry cleaning establishment.
2. At the hearing Petitioner's representative conceded all of the assessment except for the purchase of a cleaning machine, which he claimed was purchased over the internet and was therefore tax exempt.
3. At the conclusion of the hearing the administrative law judge ruled that Petitioner would be allowed a period of forty (40) days in which to have a legal memorandum or brief filed in the matter and that Division's counsel would then have fifteen (15) days in which to submit a reply.
4. No brief or legal memorandum was filed by Petitioner within the prescribed period.

**CONCLUSION(S) OF LAW**

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).

It is **DETERMINED** that the Petitioner has failed to carry the burden of proof.

**WHEREFORE**, it is the **DISPOSITION** of the West Virginia Office of Tax Appeals that the purchasers' use tax assessment issued against the Petitioner for

the period of October 1, 1996 through September 30, 2001, for tax and interest, should be and is hereby **AFFIRMED**.