

SYNOPSIS

PURCHASERS' USE TAX -- USER'S LIABILITY -- The failure of Petitioner's vendors to charge tax is not a defense for the Petitioner's failure to pay same because Petitioner's liability to pay same is not extinguished until the tax is paid. W. Va. Code §§ 11-15A-2(b) and 11-15A-11.

ADMINISTRATIVE DECISION

The Auditing Division issued a purchasers' use tax assessment against the Petitioner. This assessment was for the period of July 1, 1999 through June 30, 2002, for tax, interest, through June 30, 2002, and no additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner.

Thereafter, the Petitioner timely filed a petition for reassessment by mail postmarked October 29, 2002.

FACTS

During the assessment period the Petitioner purchased services from two (2) vendors who specialized in setting up special occasion sales, providing advertising, personnel training, etc., and employing sales personnel who worked on a commission basis.

At the hearing, Petitioner's representative stated that a portion of the tax assessment, which included applicable interest, had been previously paid because the same was not being contested.

Petitioner's representative took issue with the remainder of the assessment because the aforementioned vendor had failed to charge tax to the Petitioner, which the vendor should have done.

ISSUE AND DETERMINATION

The sole issue is whether the Petitioner has shown that the assessment is incorrect and contrary to law in whole or in part, as required by W. Va. § 11-10-9.

In this instance Petitioner's only argument is that the two (2) vendors should have charged Petitioner the tax and that their failure to do so should relieve the Petitioner from liability.

Unfortunately, for the Petitioner, W. Va. Code §§ 11-15A-2(b) and 11-15A-11 make crystal clear that the tax is imposed on virtually every person using tangible personal property or taxable services within this state and that the user's liability for same is not extinguished until that tax is paid.

The failure of Petitioner's vendors to charge the purchasers' use tax is not, therefore, a defense for the Petitioner's failure to pay same.

WHEREFORE, it is the **DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the purchasers' use tax assessment issued against the Petitioner for the period of July 1, 1999 through June 30, 2002, for tax, and interest, updated through January 31, 2003, should be and is hereby **AFFIRMED**.

Because the Petitioner has previously remitted a large amount of the purchasers' use tax liability, only the balance remains due and owing to the State Tax Department of West Virginia.