

SYNOPSIS

CONSUMERS' SALES AND SERVICE TAX – STATUTE OF LIMITATIONS NOT APPLICABLE – Because W. Va. Code § 11-15-21(a) mandates that an annual consumers' sales and service tax return be filed on or before thirty (30) days after the end of the tax year, the three (3)-year statute of limitations provided for in W. Va. Code § 11-10-15(a) runs from that date and not from the due date of each monthly consumers' sales and service tax return.

FINAL DECISION

The Auditing 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, 1999 through November 30, 2000, for tax and interest, through September 30, 2002.

Thereafter, the Petitioner timely filed a petition for reassessment.

At the conclusion of the hearing the administrative law judge gave Petitioner's representative a period of fourteen (14) days in which to decide if it wanted to retain a lawyer in order to file a brief in this case. Petitioner ultimately decided not to retain a lawyer to file a brief.

FINDINGS OF FACT

1. Petitioner is a convenience store.
2. Because of a clerical error, not all of the consumers' sales and service tax collected was remitted to the Tax Department.
3. Prior to the time of the hearing, Petitioner remitted an amount which represents the uncontested portion of the assessment.

DISCUSSION

The sole issue is whether the statute of limitations in W. Va. Code § 11-10-15(a) prohibits the Commissioner from assessing the contested portion of the assessment.

W. Va. Code § 11-10-15(a) in pertinent part states as follows:

The amount of any tax, additions to tax, penalties and interest imposed by this article or any of the other articles of this chapter to which this article is applicable shall be assessed within three years after the date the return was filed (whether or not such return was filed on or after the date prescribed for filing).

To determine what return is applicable it is necessary to reference W. Va. Code § 11-15-21(a), which states that:

(a) Date due. – On or before thirty days after the end of the tax year, each person liable for the payment of any tax due under this article shall make and file an annual return in such form as may be required by the tax commissioner, showing:

- (1) Total gross proceeds of his business for preceding tax year,
- (2) Gross proceeds upon which the tax for that year was computed, and
- (3) Any other information necessary in the computation or collection of the tax that the tax commissioner may require.

When read in para materia it is clear that the due date from which the three (3)-year statute of limitations runs in W. Va. Code § 11-10-15(a) is from the annual filing due date and not from each monthly return. Accordingly, it is Determined that the statute of limitations is not applicable in this case.

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. See W. Va. Code § 11-10A-10(e).

2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to the issue in this case, in light of the discussion of law above.

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, 1999 through November 30, 2000,

for tax and interest, updated through April 15, 2003, should be and is hereby **AFFIRMED.**

Because the Petitioner has previously remitted part of the assessed consumers' sales and service tax liability, only the balance remains due to the State Tax Commissioner of West Virginia.