

**SANITIZED DECS. – 03-122 FS, 03-123 FN, 03-124 N, 03-125 U & 03-126 C – BY
– GEORGE V. PIPER – ISSUED – 05/30/03 – SUBMITTED FOR DECISION –
04/11/03**

SYNOPSIS

CONSUMERS' SALES AND SERVICE TAX – BURDEN OF PROOF –
Assessment will be revised post-audit as permitted by W. Va. Code § 11-10A-10(e) [2000], if Petitioner proves that a portion of the assessment should be revised.

FINAL DECISION

The Auditing Division of the Commissioner's Office issued a business registration tax assessment against the Petitioner.

This assessment was for the period of July 1, 1996 through June 30, 2003, for tax, interest, through October 31, 2002, and additions to tax.

Written notice of this assessment was served on the Petitioner.

Also, the Commissioner issued a business franchise tax assessment against the Petitioner, under the provisions of Chapter 11, Articles 10 and 23 of the West Virginia Code, for the period of January 1, 1997 through December 31, 2001, for tax, interest, through October 31, 2002, and additions to tax.

Written notice of this assessment was served on the Petitioner.

Also, the Commissioner issued a corporate net income tax assessment against the Petitioner, under the provisions of Chapter 11, Articles 10 and 24 of the West Virginia Code, for the period of January 1, 1997 through December 31, 2001, for tax, interest, through October 31, 2002, and additions to tax.

Written notice of this assessment was served on the Petitioner.

Also, 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, 1997 through June 30, 2002, for tax, interest, through October 31, 2002, and additions to tax.

Written notice of this assessment was served on the Petitioner.

Also, the Commissioner issued a 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 January 1, 1997 through August 31, 2002, for tax, interest, through October 31, 2002, and additions to tax.

Written notice of this assessment was served on the Petitioner.

Thereafter, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, petitions for reassessment.

At the conclusion of the administrative hearing, the administrative law judge ruled that the record would be kept open for a period of thirty (30) days in order for the tax auditor to receive actual tax figures from Petitioner's representative and that if Petitioner should refuse or fail to supply same, all of the estimated assessments, which are in controversy, would be upheld in toto. By memo dated April 11, 2003, the tax auditor recommended that the use tax assessment be withdrawn and the consumers' sales and service tax assessment revised.

FINDINGS OF FACT

1. At the hearing, Petitioner's representative conceded the business registration tax assessment.

2. At the hearing Commissioner's counsel stated that based upon recently faxed federal corporate income tax returns, Petitioner owed no corporate net income tax for the audit period and that the business franchise tax assessment should be reduced.

3. Petitioner's representative has conceded that his client is liable for a yet to be determined amount of consumers' sales and service tax for the audit period.

DISCUSSION

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

Although the Petitioner was dilatory in making its tax records available, the same will be accepted, even at this late date, to supplant the assessments in controversy.

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 carried the burden of proof, in part, with respect to this issue.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the business registration tax assessment issued against the Petitioner for the period of July 1, 1996 through June 30, 2003, for tax, interest, updated through April 30, 2003, and additions to tax, should be and is hereby **AFFIRMED**.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the business franchise tax assessment issued against the Petitioner for the period of January 1, 1997 through December 31, 2001, should be and is hereby **MODIFIED** in accordance with the above Conclusion(s) of Law for tax,

interest, on the revised tax, updated through April 30, 2003, and additions to tax, for a total revised liability.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the corporate net income tax assessment issued against the Petitioner for the period of January 1, 1997 through December 31, 2001, should be and is hereby **VACATED**, and the Petitioner owes no further corporate net income tax liability for the period in question.

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, 1997 through June 30, 2002, should be and is hereby **VACATED**, and the Petitioner owes no further purchasers' use tax liability for the period in question.

It is **ALSO** 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, 1997 through August 31, 2002, should be and is hereby **MODIFIED** in accordance with the above Conclusion(s) of Law for tax, interest, on the revised tax, updated through April 30, 2003, and additions to tax, for a total revised liability.