

**SUBMITTED ON DOCUMENTS ONLY**

**SYNOPSIS**

**CONSUMERS' SALES AND SERVICE TAX – BURDEN OF PROOF**

**MET** – Upon examination, actual sales figures will be accepted in lieu of estimates.

**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.

Thereafter, on March 24, 2003, 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, 1997 through December 31, 2002, for tax, interest, through December 31, 2002, and no additions to tax, for a total assessed liability.

Thereafter, by mail postmarked, May 21, 2003, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment. See W. Va. Code § 11-10A-8(1) [2002].

Prior to the time of the scheduled hearing Petitioner's representative agreed to waive the right to a hearing in person and sent actual sales figures for the audit period to Commissioner's counsel, requesting that the same be accepted in lieu of the tax estimates.

**FINDINGS OF FACT**

Upon examination, Commissioner's counsel agreed to accept Petitioner's sales figures in lieu of the estimates

## DISCUSSION

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) and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

In this case Commissioner's counsel, as well as this tribunal, have accepted the actual sales figures for use in computing its tax liability.

## CONCLUSIONS 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) and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has carried the burden of proof with respect to the issue of whether exact sales figures should supplant estimated tax figures.

## 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 1997 through December 31, 2002, should be and is hereby **MODIFIED** in accordance with the above Conclusions of Law for tax, interest, on the revised tax, updated through September 30, 2003 and no additions to tax, for a total revised liability.