

## SYNOPSIS

**CONSUMERS' SALES AND SERVICE TAX – REASONABLE CAUSE NOT SHOWN FOR WAIVER OF ADDITIONS TO TAX** – Petitioner's practice of segregating consumers' sales and service tax and subsequently spending same for his own personal use is an illegal use of the State's moneys and clearly does not constitute reasonable cause for waiver of additions to tax as required by W. Va. Code § 11-10-18(a)(1)-(2) [1986].

## FINAL DECISION

The Internal Auditing Division, State Tax Commissioner's Office issued a consumers' sales and service tax assessment against the Petitioner. This assessment was for the period of January 1, 2002 through February 28, 2003, for tax, interest, through April 15, 2003, and additions to tax.

Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked, June 7, 2003, the Petitioner timely filed with this tribunal, a petition for reassessment. See W. Va. Code § 11-10A-8(1) [2002].

Prior to the time of the hearing, Petitioner remitted an amount which represented the whole of the tax liability as well as a few dollars to be applied against the assessed interest.

## FINDINGS OF FACT

During the assessment period Petitioner segregated consumers' sales and service tax from the bar and related businesses; however, he converted same for his own personal use.

## **DISCUSSION**

The sole issue is whether Petitioner has made a showing that his actions constituted reasonable cause for waiver of additions to tax pursuant to W. Va. Code § 11-10-18(a)(1)-(2) [1986].

In this case, Petitioner engaged in the practice of keeping consumers' sales and service tax which should have been remitted to the Tax Commissioner. Said actions are in direct violation of West Virginia tax laws and, therefore, clearly do not constitute reasonable cause.

## **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) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to the issue of whether his actions constitute reasonable cause for waiver of additions to tax.

## **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, 2002 through February 28, 2003, for tax, interest and additions to tax, should be and is hereby **AFFIRMED**.

Because the Petitioner has previously remitted part of the assessed tax and interest, only the balance remains due and owing to the State Tax Commissioner of West Virginia.