

**SANITIZED DECS. – 03-378 U, 03-379 HP & 03-380 FS – BY – GEORGE V. PIPER – SUBMITTED FOR DECISION – 10/08/03 -- ISSUED – 11/04/03**

### **SYNOPSIS**

**PURCHASERS' USE TAX – BUSINESS REGISTRATION TAX – BROAD-BASED HEALTH CARE RELATED TAX – BURDEN OF PROOF NOT MET** – No statutory basis exists to waive interest pursuant to W. Va. Code § 11-10-7b(a)(1)-(2) because the tax deficiencies are not attributable, in whole or in part, to any error or delay caused by an officer or employee of the Tax Division.

**PURCHASERS' USE TAX AND BROAD-BASED HEALTH CARE RELATED TAX – REASONABLE CAUSE NOT SHOWN FOR WAIVER OF ADDITIONS TO TAX** – Waiver of additions to tax is not applicable in this case pursuant to W. Va. Code § 11-10-18(a)(1)-(2) because Petitioner's tax reporting for past periods reflected the same having been underreported.

### **FINAL DECISION**

The Field Auditing Division Director of the Commissioner's Office issued a purchasers' use tax assessment against the Petitioner. This assessment was for the period of April 1, 2000 through March 31, 2003, for tax, interest, through June 30, 2003, and additions to tax.

Also, on June 9, 2003, the Commissioner issued a broad-based health care related tax assessment against the Petitioner, under the provisions of Chapter 11, Articles 10 and 27 of the West Virginia Code, for the period of January 1, 2000 through December 31, 2002, for tax, interest through June 30, 2003, and additions to tax.

Thereafter, by mail, 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 received permission to present his side of the case in writing instead of in person when the case was heard.

The crux of Petitioner's argument being that reimbursements from third party insurers and government agencies have been reduced in the past few years and that although all the tax amounts are due and owing, the imposition of interest and additions to tax will pose an undue hardship on the business.

### **FINDINGS OF FACT**

1. Waiver of interest under W. Va. Code § 11-10-7b(a)(1)-(2) is not applicable in this case because the tax deficiencies are not attributable, in whole or in part, to any error or delay caused by an officer or employee of the Tax Division.
2. Petitioner was previously audited for use tax and found liable for same.
3. Petitioner was previously audited for broad-based health care related tax and found to have underreported same.

### **DISCUSSION**

The sole issue is whether the Petitioner has shown reasonable cause for waiver of additions to tax, pursuant to W. Va. Code § 11-10A-18(a)(1)-(2), inasmuch as interest is not waivable in any event given the fact that the Tax Division was not responsible for any error or delay resulting in the above tax assessment.

The findings in this case, however, preclude any waiver of additions to tax simply because Petitioner was audited previously and found to have underreported both the purchasers' use tax and the broad-based health care provider taxes. Said failure to properly report in the past indicates a continuing pattern of willful neglect and that no reasonable cause exists for waiver of additions to tax.

### **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) 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 reasonable cause for waiver of the additions to tax.

### **DISPOSITION**

**WHEREFORE**, it is 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 April 1, 2000 through March 31, 2003, for tax, interest, updated through October 31, 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 broad-based health care related tax assessment issued against the Petitioner for the period of January 1, 2000 through December 31, 2002, for tax, interest, updated through October 31, 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 registration tax assessment issued against the Petitioner for the period of July 1, 1999 through June 30, 2003 for tax and interest updated through October 31, 2003, should be and is hereby **AFFIRMED**.