

SYNOPSIS

PURCHASERS' USE TAX -- WAIVER OF ADDITIONS TO TAX -- REASONABLE CAUSE AND LACK OF WILLFUL NEGLECT SHOWN -- It constitutes reasonable cause for failure to pay purchasers' use tax where the employee assigned to ensure payment of use tax on purchases is forced to suddenly resign due to acute illness, and the employee replacing her fails to pay purchasers' use tax on a single invoice during the period immediately following her hiring, because there is inadequate time to properly train the new employee.

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, the Director of the Division issued a purchasers' use tax assessment against the Petitioner. The assessment was for the year period of April 1, 2000, through December 31, 2002, for tax, interest, computed through April 30, 2003, and additions to tax, for a total assessed tax liability.

Thereafter, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, a petition for reassessment challenging only the assessment of additions to tax. With its petition for reassessment, the petitioner remitted tax and interest.

FINDINGS OF FACT

1. The Petitioner is engaged in the business of distributing beer and wine products.
2. The assessment in this action arises from the Petitioner's failure to pay purchasers' use tax on a single invoice.
3. The purchase on which tax was determined to be due involved the purchase of computer equipment on or about June 14, 2001 of a substantial amount.
4. The purchasers' use tax on said purchase was computed at six per cent (6%) of the purchase price.

5. The Petitioner had an employee who suffered from an illness that, at that time, necessitated her immediate resignation and traveling to another state for treatment.

6. Because of the suddenness of the employee's departure, the Petitioner hired a replacement employee who could not be adequately trained in the performance of the duties of the position before she assumed the position.

7. Because the Petitioner was unable to adequately train its new employee, the new employee failed to remit the purchasers' use tax on the June 14, 2001 purchase.

8. During the audit period, the purchase was the only purchase on which the Petitioner did not pay purchasers' use tax.

9. Upon receipt of the purchasers' use tax assessment, the Petitioner conceded that the tax and interest were due and owing, and remitted the same.

DISCUSSION

The only issue presented in this action is whether reasonable cause exists to waive the additions to tax assessed by the Tax Commissioner and whether the failure to pay the tax is due to willful neglect.

During the audit period the Petitioner simply failed to pay the use tax on a single invoice. The invoice does involve a substantial purchase, in terms of dollars expended. However, the amount of the invoice, and consequently the amount of the tax, should not be the controlling factor.¹ The fact that the purchase was a substantial one, resulting in a relatively large use tax, does not, in and of itself, constitute evidence that the Petitioner lacked reasonable cause for its failure to pay tax on the purchase. The fact that the Petitioner paid the tax on all other invoices is evidence of Petitioner's good faith in paying its taxes.

¹ If the invoice had been for an insignificant amount, it seems unlikely that the Commissioner would have assessed additions to tax.

There is nothing in the evidence to show that the petitioner's failure to pay the tax was due to willful neglect. Given the circumstances, the Petitioner simply lacked adequate time in which to train its new employee. It is an unfortunate circumstance that it was so large an invoice that came due on the heels of the resignation of the former employee. But it was nothing more than that, an unfortunate circumstance. There is no evidence that the failure to pay was the result of a willful act on the part of the Petitioner or any of its employees. Under the circumstances, the Office of Tax Appeals finds that the actions of the Petitioner were not due to willful neglect.

CONCLUSIONS OF LAW

1. Additions to tax may be waived where there is reasonable cause for failure to pay tax due and where the failure to pay said tax is not due to willful neglect on the part of the taxpayer. W. Va. Code § 11-10-18(a)(2).

2. There exists reasonable cause for the waiver of additions to tax for failure to pay purchasers' use tax on a single invoice, where the employee responsible for paying the tax is suddenly required to leave employment by reason of illness and the employee hired to replace the former employee fails to pay the tax because there was a lack of time to adequately train the employee at the time when the use tax is required to be paid.

3. The fact that the Petitioner failed to pay tax on a single invoice during the 2-year, 9-month audit period, is evidence that the Petitioner is not guilty of willful neglect.

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 it is entitled to relief from the assessment. See W. Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

2. In this action, the Petitioner is required to show that there exists reasonable cause for waiver of additions to tax.

3. The Petitioner has carried its burden of showing that there exists 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 assessment of additions to tax is **VACATED** in full. The Petitioner, having paid the admitted liability respecting the assessed tax and interest for the period of April 1, 2000 through December 31, 2002, owes no further portion of the assessment.