

SYNOPSIS

PURCHASERS' USE TAX – BURDEN OF PROOF MET IN PART --

Pursuant to W. Va. Code § 11-10A-10(e) [2002], an assessment can be revised if Petitioner meets its burden of proof that a portion thereof is incorrect and contrary to law.

FINAL DECISION

The Director of the Field Auditing Division of the Commissioner's Office issued a purchasers' use tax assessment against the Petitioner. This assessment was for the period of April 1, 1998 through March 31, 2003, for tax, interest, through March 31, 2003, and no additions to tax.

Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked September 2, 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 hearing Petitioner advised this tribunal that its counsel and Commissioner's counsel had agreed that certain transactions should be deleted from the assessment, thereby reducing the tax.

DISCUSSION

The sole issue is whether 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) [2002].

In this case Petitioner has shown that a portion of the tax assessment should be deleted because the same involved payments by another person.

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].

2. The Petitioner-taxpayer in this matter has carried the burden of proof with respect to certain transactions between other persons, not involving the taxpayer.

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, 1998 through March 3, 2003, should be and is hereby **MODIFIED** in accordance with the above Conclusions of Law for tax, interest, on the revised tax, updated through December 31, 2003, and no additions to tax, for a total revised liability.

Interest continues to accrue on this unpaid purchasers' use tax at a daily rate until this particular tax liability is fully paid.