

## **SYNOPSIS**

**CONSUMERS' SALES AND SERVICE TAX AND WITHHOLDING TAX -- BURDEN OF PROOF NOT MET** – Failure by the Petitioner to appear at hearing or otherwise submit evidence showing that the assessments are incorrect and contrary to law, in whole or in part, see W. Va. Code § 11-10A-10(e) [2002], mandates that the same be upheld in toto against him, individually, as a responsible corporate officer. See W. Va. Code § 11-15-17 [1978] and 110 C.S.R. 15, § 4a.5 (May 1, 1992).

## **FINAL DECISION**

The Internal Auditing Division of the West Virginia State Tax Commissioner's Office issued consumers' sales and service tax and withholding tax assessments against the Petitioner.

The consumers' sales and service tax assessment was for the period of October 1, 1997 through March 31, 1999, for tax, interest, updated through May 15, 2003, and additions to tax.

The withholding tax assessment was for the period of April 1, 1997 through September 30, 2000, for a "money penalty" (tax).

Written notice of both assessments was served on the Petitioner by mailing same to his last known address.

By mail postmarked July 23, 2003, the Petitioner timely filed petitions for reassessment. See W. Va. Code § 11-10A-8(1) [2002].

The Petitioner was served with the statutory written notice of hearing. After waiting twenty (20) minutes for someone to appear, the hearing was held without an appearance on behalf of the Petitioner, see W. Va. Code § 11-10A-11 [2002] and 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

## **FINDINGS OF FACT**

1. Petitioner's business filed untimely no-remittance consumers' sales and service tax returns during the audit period.

2. In his petition for reassessment Petitioner argued that certain of the disputed taxes were settled as a result of assets being set aside for distribution toward taxes owed and that some taxes were assessed after the business was either closed or ceased to have employees.

3. Petitioner never supplied any evidence proving the arguments raised in his petition for reassessment.

4. Petitioner is listed as the only incorporator and officer for the corporation in the West Virginia Secretary of State's Office.

## **DISCUSSION**

The sole issue is whether Petitioner has shown that the assessments are 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).

In this case Petitioner was assessed as the responsible corporate officer regarding the delinquent consumers' sales and service taxes and withholding taxes owed by the corporation.

Because Petitioner never presented any evidence whatsoever refuting applicability of same to him as the responsible corporate officer, this tribunal has no other recourse than to affirm both assessments in toto. Also, see W. Va. Code § 11-15-17 [1978] and 110 C.S.R. 15, § 4a.5 (May 1, 1992).

## **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, § 69.2 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to the issue of his personal liability for the corporate debt owed to the State Tax Commissioner. See 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

### **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 October 1, 1997 through March 31, 1999, for tax, interest, updated through January 15, 2004, and additions to tax, should be and is hereby **AFFIRMED**.

Interest continues to accrue on this unpaid consumers' sales and service tax at a daily rate until this particular tax liability is fully paid.

It is **ALSO** the **FINAL DECISION OF THE WEST VIRGINIA OFFICE OF TAX APPEALS** that the withholding tax assessment issued against the Petitioner for the period of April 1, 1997 through September 30, 2000, for a money penalty, should be and is hereby **AFFIRMED**.