

SYNOPSIS

PURCHASERS' USE TAX – BURDON OF PROOF NOT MET—Except for two (2) invoices which Tax Commissioner's counsel agreed at hearing were not taxable, the remainder of the invoices will be considered taxable where the Petitioner does not appear or otherwise prove that the same are incorrect and contrary law. W.Va. Code § 11-10A-10(e) [2002] and 121 C.S.R. 1, § 69.2 (Apr. 20, 2003).

FINAL DECISION

The Director of the Field Auditing Division of the Commissioner's Office issued a purchaser's use tax assessment against the Petitioner. The assessment was for the period of October 1, 1998, through September 30, 2003, for tax, interest, through December 31, 2003, and no additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked March 5, 2004, the Petitioner timely filed a petition for reassessment. *See* W. Va. Code § 11-10A-8(1) [2002].

Subsequently, notice of a hearing on the petition was sent to the Petitioner and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002] and 121 C.S.R. 1, § 61.3.3 (Apr. 20, 2003).

There was no appearance on behalf of the Petitioner when the hearing was convened. The hearing was held, however, without an appearance on behalf of the Petitioner *see* W. Va. Code § 11-10A-10(a) [2002] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

FINDINGS OF FACT

Two (2) invoices on their face show that the tax was paid; the Petitioner presented no evidence whatsoever that the remaining invoices were not taxable.

DISCUSSION

The sole issue is whether the 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] and 121 C.S.R. 1, § 63.1 (Apr. 20, 2003).

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 a 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, except with respect to the two (2) invoices which on their face show that tax was paid. *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 purchasers' use tax assessment issued against the Petitioner for the period of October 1, 1998, through September 30, 2003, should be and is hereby **MODIFIED** in accordance with the above Conclusions of Law for **revised** tax, interest, on the revised tax, through June 15, 2004, and no additions to tax, for a **total revised** liability.