

**SANITIZED DECISION – DOCKET NO. 04-322 C – ROBERT W. KIEFER, JR., ALJ –
SUBMITTED for DECISION on SEPTEMBER 21, 2005 – ISSUED on FEBRUARY 23,
2006**

SYNOPSIS

CONSUMERS’ SALES AND SERVICE TAX – TAXPAYER’S FAILURE TO CARRY BURDEN OF PROOF -- The failure of a taxpayer to articulate adequate grounds in his petition for reassessment justifying his claim, combined with his failure to appear at a hearing and to present any evidence respecting his claim, will result in a denial of relief to the taxpayer. *See* W. Va. Code § 11-10A-10(e) [2002]; W. Va. Code. St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

FINAL DECISION

On April 15, 2004, the Unit Manager of the Accounts Monitoring Unit of the Internal Auditing Division of the West Virginia State Tax Commissioner’s Office (“the Commissioner”) issued an assessment for consumers’ sales and service tax against the Petitioner. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 15 of the West Virginia Code. The assessment was for the period January 1, 2002, through December 31, 2002, for tax in the amount, interest in the amount, computed through April 15, 2004, and additions to tax in the amount for a total assessed tax liability. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked May 6, 2004, received in the offices of this tribunal, the West Virginia Office of Tax Appeals, on May 12, 2004, the Petitioner timely filed a petition for reassessment. *See* W. Va. Code §§ 11-10A-8(1) and 11-10A-9(a)-(b) [2002].

Subsequently, the Petitioner was given notice of the evidentiary hearing in this matter, by certified mail, return receipt requested, at the address given by the Petitioner in his petition for reassessment. The notice of hearing was returned unclaimed.

At the time scheduled for convening the evidentiary hearing, there was no appearance on behalf of the Petitioner. The evidentiary hearing was held, however, without an appearance on behalf of the Petitioner, in accordance with the provisions of W. Va. Code § 11-10A-10(a) [2002] and W. Va. Code. St. R. § 121-1-69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. In his petition for reassessment, the Petitioner asserted that he attempted to run his business, but that it was unsuccessful and that he ceased operations and went to work for another company.

2. The implication is that the gross receipts derived by the Petitioner from his business do not justify the amount of consumers' sales and service tax assessed by the State Tax Commissioner.

3. In the absence of evidence sufficient to support the allegations in his petition for reassessment, the grounds articulated by the Petitioner are inadequate to show that the assessment is erroneous, unlawful, void or otherwise invalid.

4. The Petitioner was provided with notice that he was required to appear at the evidentiary hearing and present evidence respecting the reasons he believed that the assessment was erroneous, unlawful, void or otherwise invalid, but refused to accept said notice.

5. The Petitioner did not appear at the time and place of the hearing and presented no evidence respecting any of his allegations.

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 to show that any assessment of tax against him is erroneous, unlawful, void or otherwise invalid. *See* W. Va. Code § 11-10A-10(e) [2002]; W. Va. Code. St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

2. The Petitioner in this matter has failed to carry his burden of proving that the assessment of tax against him is erroneous, unlawful, void or otherwise invalid.

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 January 1, 2002, through December 31, 2002, for tax in the amount, interest in the amount, computed through April 15, 2004, and additions to tax in the amount, for a total assessed tax liability should be and is hereby **AFFIRMED**. Pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002], **interest continues to accrue** on this consumers' sales and service tax assessment until this liability is fully paid.