

**SANITIZED DECISION – 04-685 W, 04-686 U, & 04-687 C – BY GEORGE V. PIPER,  
ALJ -- SUBMITTED for DECISION on JUNE 6, 2006 -- ISSUED on JUNE 26, 2006**

**SYNOPSIS**

**CONSUMERS’ SALES AND SERVICE TAX -- BURDEN OF PROOF --** In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment involving consumers’ sales and service tax, the burden of proof is upon Petitioner to show that any assessment of tax against it 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 (Apr. 20, 2003).

**CONSUMERS’ SALES AND SERVICE TAX -- BURDEN OF PROOF --** A taxpayer does not satisfy its burden of proof when, for one or more of the years in question, it had gross receipts, but it does not appear at the evidentiary hearing or offer other evidence sufficient to show that its gross receipts were not subject to the consumers’ sales and service tax or that they were exempt from the consumers’ sales and service tax or that business operations had ceased as of a certain date.

**PURCHASERS’ USE TAX -- BURDEN OF PROOF --** In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment involving purchasers’ use tax, the burden of proof is upon Petitioner to show that any assessment of tax against it 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 (Apr. 20, 2003).

**PURCHASERS’ USE TAX -- BURDEN OF PROOF --** A taxpayer does not satisfy its burden of proof when it fails to appear at the evidentiary hearing or offer other evidence sufficient to show that it owed no use tax or that the business ceased operations as of certain date.

**PERSONAL INCOME TAX WITHHOLDING -- BURDEN OF PROOF --** In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment involving personal income tax withholding, the burden of proof is upon Petitioner to show that any assessment of tax against it 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 (Apr. 20, 2003).

**PERSONAL INCOME TAX WITHHOLDING -- BURDEN OF PROOF --** A taxpayer does not satisfy its burden of proof when it fails to appear at the evidentiary hearing or offer other evidence proving that it had no employees and therefore owed no withholding taxes.

**FINAL DECISION**

A tax examiner with the Field Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) made several attempts to conduct an audit of the books and records of the Petitioner, but was apparently

unable to conduct same with Petitioner or its representatives because of a lack of cooperation. Thereafter, on August 9, 2004, the Director of this Division issued three (3) separate assessments against the Petitioner. Because of lack of cooperation on the part of the Petitioner, the assessments issued by the State Tax Commissioner were estimated, as authorized by law.

The first assessment was a consumers' sales and service tax assessment, 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 of November 15, 2001, through March 31, 2004, for tax of \$, interest, computed through July 31, 2004, of \$, and additions to tax of \$, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioner on August 13, 2004.

The second assessment issued by the Director of this Division was a purchasers' use tax assessment, issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 15A of the West Virginia Code. The assessment was for the period of November 15, 2001, through March 31, 2004, for tax of \$, interest, computed through July 31, 2004, of \$, and no additions to tax, for a total assessed liability of \$. Written notice of this assessment was also served on the Petitioner on August 13, 2004.

The third assessment issued by the Director of this Division was a West Virginia personal income tax withholding assessment, issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for the period of November 15, 2001, through December 31, 2003, for tax of \$, interest, computed through July 31, 2004, of \$, and additions to tax of \$, for a total assessed liability of \$. Written notice of this assessment was also served on the Petitioner on August 13, 2004.

Thereafter, by mail postmarked October 9, 2004, the Petitioner timely filed, with this tribunal, a petition for reassessment with respect to each of the three assessments. W. Va. Code §§ 11-10A-8(1) [2002] and 11-10A-9(a)-(b) [2002].

Subsequently, notice of a hearing on the petitions was sent to the Petitioner. The Petitioner did not request a continuance of the hearing. 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, in accordance with the provisions of W. Va. Code § 11-10A-10(a) [2002] and 121 C.S.R. 1, § 69.1 (Apr. 20, 2003).

### **FINDINGS OF FACT**

1. With respect to the assessment for consumers' sales and service tax, the petition asserts that the business ceased operations on December 31, 2003 and that in fact no sales tax was due for services rendered.
2. With respect to the assessment for purchasers' use tax, the petition asserts that the business ceased operations on December 31, 2003 and that in fact no use tax was due.
3. With respect to the assessment for personal income tax withholding, the petition asserts that the business was a sole proprietorship with no employees and, therefore, no withholding tax was due.
4. The Petitioner was provided with written notice that he was required to appear at the evidentiary hearing and present evidence respecting the reasons he believed that the assessments were erroneous, unlawful, void or otherwise invalid.
5. The Petitioner did not appear at the time and place of the hearing and presented no evidence respecting any of its allegations.

## DISCUSSION

The sole issue concerning all three (3) assessments is whether Petitioner has met its required burden of proof.

The crux of Petitioner's arguments is that it either was not subject to any of the taxes and/or that it was not in business after December, 2003; however, Petitioner has presented absolutely no evidence to support its arguments, thereby leaving this tribunal no legal recourse but to affirm all three (3) assessments *in toto*.

## 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 Petitioner to show that any assessment of tax against it 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 (Apr. 20, 2003).
2. Petitioner has failed to meet the required burden of proof because it failed to appear at the evidentiary hearing or to otherwise prove that any of the assessments are 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 of November 15, 2001, through March 31, 2004, for tax of \$, interest of \$, and additions to tax of \$, **totaling \$**, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002], interest accrues on this consumers' sales and service tax assessment until the liability is fully paid.

It is **ALSO** 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 November 15, 2001, through March 31, 2004, for tax of \$, interest of \$, and no additions to tax, **totaling \$**, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002], interest accrues on this purchasers' use tax assessment until the liability is fully paid.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that personal income withholding tax assessment issued against the Petitioner for the period of November 15, 2001, through December 31, 2003, for tax of \$, interest of \$, and additions to tax of \$, **totaling \$**, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W. Va. Code § 11-10-17(a) [2002], interest accrues on this personal income withholding tax assessment until the liability is fully paid.