

REDACTED DECISION -- 04-748 U, 04-749 C, 04-750 W, 04-790 FN, 04-791 N -- BY ROBERT W. KIEFER, JR., ALJ -- SUBMITTED for DECISION on SEPTEMBER 15, 2008 -- ISSUED on NOVEMBER 21, 2008

SYNOPSIS

PURCHASERS' USE TAX -- TAXPAYER'S FAILURE TO CARRY BURDEN OF PROOF -- The failure of the taxpayer to articulate adequate grounds in its petition for reassessment justifying its claim, combined with its failure to appear at a hearing and to present any evidence respecting its 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).

CONSUMERS' SALES AND SERVICE TAX -- TAXPAYER'S FAILURE TO CARRY BURDEN OF PROOF -- The failure of the taxpayer to articulate adequate grounds in its petition for reassessment justifying its claim, combined with its failure to appear at a hearing and to present any evidence respecting its 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).

WITHHOLDING TAX -- TAXPAYER'S FAILURE TO CARRY BURDEN OF PROOF -- The failure of the taxpayer to articulate adequate grounds in its petition for reassessment justifying its claim, combined with its failure to appear at a hearing and to present any evidence respecting its 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).

BUSINESS FRANCHISE TAX -- TAXPAYER'S FAILURE TO CARRY BURDEN OF PROOF -- The failure of the taxpayer to articulate adequate grounds in its petition for reassessment justifying its claim, combined with its failure to appear at a hearing and to present any evidence respecting its 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).

CORPORATION NET INCOME TAX -- TAXPAYER'S FAILURE TO CARRY BURDEN OF PROOF -- The failure of the taxpayer to articulate adequate grounds in its petition for reassessment justifying its claim, combined with its failure to appear at a hearing and to present any evidence respecting its 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 August 30, 2004, the Director of the Field Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) issued a purchasers’ use tax assessment against the Petitioner. The assessment was 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 January 1, 2003, through December 31, 2005, for estimated tax in the amount of \$____, interest in the amount of \$____, computed through September 30, 2004, and additions to tax in the amount of \$____, for a total assessed tax liability of \$____. Written notice of this assessment was personally served on the Petitioner on September 21, 2004, as a result of a Revenue Agent’s hand-delivering a copy thereof to an officer of the corporation.

On the same day, the Director also issued a consumers’ sales and service tax assessment against the Petitioner. The 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 of January 1, 2003, through December 31, 2005, for estimated tax in the amount of \$____, interest in the amount of \$____, computed through September 30, 2004, and additions to tax in the amount of \$____, for a total assessed tax liability of \$____. Written notice of this assessment was served on the Petitioner in the same manner as described above.

On the same day, the Director also issued a personal income withholding tax assessment against the Petitioner. The assessment was 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 January 1, 2003, through December 31, 2005, for estimated tax in the amount of \$____, interest in the amount of \$____, computed through

September 30, 2004, and additions to tax in the amount of \$____, for a total assessed tax liability of \$____. Written notice of this assessment was served on the Petitioner in the same manner as described above.

On the same day, the Director also issued a business franchise tax assessment against the Petitioner. The assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 23 of the West Virginia Code. The assessment was for the period of January 1, 2003, through December 31, 2005, for estimated tax in the amount of \$____, interest in the amount of \$____, computed through September 30, 2004, and additions to tax in the amount of \$____, for a total assessed tax liability of \$____. Written notice of this assessment was served on the Petitioner in the same manner as described above.

On the same day, the Director also issued a corporation net income tax assessment against the Petitioner. The assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 24 of the West Virginia Code. The assessment was for the period of January 1, 2003, through December 31, 2005, for estimated tax in the amount of \$____, interest in the amount of \$____, computed through September 30, 2004, and additions to tax in the amount of \$____, for a total assessed tax liability of \$____. Written notice of this assessment was served on the Petitioner in the same manner as described above.

Thereafter, the Petitioner timely filed a petition for reassessment which was received in the offices of this tribunal, the West Virginia Office of Tax Appeals, on November 1, 2004. W. Va. Code §§ 11-10A-8(1) [2007] and 11-10A-9 [2005]. Subsequently, notice of a hearing on the

petition was sent to the Petitioner at the address provided by it, and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002].

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 W. Va. Code. St. R. § 121-1-69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. In its petition for reassessment, the Petitioner asserted that the figures underlying the assessment were incorrect.

2. If supported by competent evidence, the grounds articulated by the Petitioner would be sufficient to show that the assessment is erroneous, unlawful, void or otherwise invalid.

3. However, the Petitioner did not appear at the time and place of the hearing and presented no evidence respecting any of its allegations.

4. The Petitioner was provided with notice at its last known address that it was required to appear at the evidentiary hearing and present evidence respecting the reasons it believed that the assessment was erroneous, unlawful, void or otherwise invalid.

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 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 and 69.2 (Apr. 20, 2003).

2. The Petitioner in this matter has failed to carry its burden of proving that any assessment of taxes against it is erroneous, unlawful, void or otherwise invalid.

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 January 1, 2003, through December 31, 2005, for estimated tax in the amount of \$____, interest in the amount of \$____, computed through September 30, 2004, and additions to tax in the amount of \$____, for a total assessed tax liability of \$____, should be and is hereby **AFFIRMED**.

It is **ALSO** 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 January 1, 2003, through December 31, 2005, for estimated tax in the amount of \$____, interest in the amount of \$____, computed through September 30, 2004, and additions to tax in the amount of \$____, for a total assessed tax liability of \$____, should be and is hereby **AFFIRMED**.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income withholding tax assessment issued against the Petitioner for the period of January 1, 2003, through December 31, 2005, for estimated tax in the amount of \$____, interest in the amount of \$____, computed through September 30, 2004, and additions to tax in the amount of \$____, for a total assessed tax liability of \$____, should be and is hereby **AFFIRMED**.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the business franchise tax assessment issued against the Petitioner for the period

of January 1, 2003, through December 31, 2005, for estimated tax in the amount of \$____, interest in the amount of \$____, computed through September 30, 2004, and additions to tax in the amount of \$____, for a total assessed tax liability of \$____, should be and is hereby **AFFIRMED.**

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the corporation net income tax assessment issued against the Petitioner for the period of January 1, 2003, through December 31, 2005, for estimated tax in the amount of \$____, interest in the amount of \$____, computed through September 30, 2004, and additions to tax in the amount of \$____, for a total assessed tax liability of \$____, should be and is hereby **AFFIRMED.**