

**SANITIZED DEC. 05-181 C – BY GEORGE V. PIPER – SUBMITTED FOR  
DECISION 9/8/05 – ISSUED 9/12/05**

**SYNOPSIS**

**CONSUMERS' SALES AND SERVICE TAX – BURDEN OF PROOF NOT MET** – Failure to appear or to otherwise dispute the revised assessment mandates that the same be upheld *in toto*.

**FINAL DECISION**

A tax examiner with the Field Auditing Division of the West Virginia State Tax Commissioner's Office conducted an audit of the books and records of the Petitioner. Thereafter, on February 16, 2005, the Director of this Division of the Commissioner's Office issued a consumers' sales and service tax assessment 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 of January 1, 2002 through December 31, 2004, for tax, interest, through March 31, 2005, and additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner on February 18, 2005.

Thereafter, by mail postmarked April 12, 2005, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, 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 parties and a hearing was held in accordance with the provisions of W. Va. Code § 11-10A-10 [2002] and W. Va. Code St. R. § 121-1-61.3.3 (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 W. Va. Code St. R. § 121-1-69.1 (Apr. 20, 2003).

At the evidentiary hearing, Commissioner's counsel stated that based upon the arguments contained in the Petitioner's petition for reassessment, Respondent issued a revised consumers' sales and service tax assessment on July 27, 2005, for the period of July 1, 2002 through December 31, 2004 for tax, interest, and additions to tax, for a total due, the same having supplanted the earlier assessment.

#### **FINDINGS OF FACT**

1. Petitioner is engaged in the business of medical transcriptions and medical billings.
2. Petitioner was given credit for a certain duplicative entry, as well as for other entries which had been previously paid via direct pay permits by its customers.
3. As a result of said revisions, a new revised consumers' sales and service tax assessment was subsequently forwarded to the Petitioner; however Petitioner has failed and/or refused to respond to said assessment except to request going forward treatment from January 1, 2005. Said request for going forward treatment was denied by Respondent.
4. Although Petitioner was given notice of the evidentiary hearing as shown by the signed certified mail return receipt card, neither Petitioner nor its duly authorized representative appeared at the time and place of the hearing.

## DISCUSSION

The only issue is whether the Petitioner has shown that the revised assessment is incorrect and contrary to law, in whole or in part.

In this instance, Petitioner's arguments as set forth in its petition for reassessment, were addressed by the Respondent by the issuance of a revised assessment. However, Petitioner has now refused to acknowledge same and failed to appear at the hearing as required in the notice of hearing, thereby leaving this tribunal no alternative but to affirm same in its entirety.

## CONCLUSIONS OF LAW

Based upon all of the above it is **HELD** 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 W. Va. Code St. R. § 121-1-63.1 (Apr. 20, 2003).

2. The Petitioner-taxpayer in this matter has failed to carry the burden of proof with respect to said issue. *See* W. Va. Code St. R. § 121-1-69.2 (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 January 1, 2002 through December 31, 2004, for tax, interest, and additions to tax, totaling \$, should be and is hereby **MODIFIED** in accordance with the above Conclusions of Law for **revised** tax, interest, on the revised tax, through March 31, 2005, and additions to tax, for a **total revised** liability.

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