

**SANITIZED DECS. 05-355 N, 05-356 W, 05-357 FN, 05-358 U & 05-359 C – BY
GEORGE V. PIPER – SUBMITTED FOR DECISION – 10/14/05 – ISSUED 10/28/05**

SYNOPSIS

BUSINESS FRANCHISE TAX – PURCHASERS’ USE TAX – CONSUMERS’ SALES AND SERVICE TAX – ACTUAL SALES AND INCOME FIGURES WHEN PROVIDED MAY SUPPLANT ESTIMATED TAX FIGURES – Prior to hearing, Petitioner may present detailed tax and income figures, which when verified, may supplant earlier tax estimates.

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 April 19, 2005, the Director of this Division of the Commissioner’s Office issued a corporate net income 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 24 of the West Virginia Code. The assessment was for the period of January 1, 2001 through December 31, 2003, for tax, interest through April 30, 2005, and additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner on April 27, 2005.

Also, on April 19, 2005, the Commissioner issued a withholding tax assessment against the Petitioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code, for the period of January 1, 2000 through December 31, 2004, for tax, interest

through April 30, 2005, and additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner on April 27, 2005.

Also, on April 19, 2005, the Commissioner issued a business franchise tax assessment against the Petitioner under the provisions of Chapter 11, Articles 10 and 23 of the West Virginia Code. This assessment was for the period of January 1, 2001 through December 31, 2003, for tax, interest through April 30, 2005, and additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner on April 27, 2005.

Also, on April 19, 2005, the Commissioner issued a purchasers' use tax assessment against the Petitioner under the provisions of Chapter 11, Articles 10 and 15A of the West Virginia Code, for the period of April 1, 2000 through February 28, 2005, for tax, interest through April 30, 2005, and additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner on April 27, 2005.

Also, on April 19, 2005, the Commissioner issued a consumers' sales and service tax assessment against the Petitioner under the provisions of Chapter 11, Articles 10 and 15 of the West Virginia Code, for the period of January 1, 2002 through February 28, 2005, for tax, interest through April 30, 2005, and additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner on April 27, 2005.

Thereafter, by mail postmarked June 13, 2005, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, petitions for reassessment. *See* W. Va. Code § 11-10A-8(1) [2002].

Prior to the time of the hearing, Petitioner agreed to have its books and records audited with the aim of utilizing its actual sales and income figures in lieu of the estimated

tax figures used in the earlier five (5) assessments. Petitioner also requested that the hearing in person be waived and that the matter be decided solely on the results of the detailed audits.

FINDINGS OF FACT

1. During the conduct of the detailed audit, the tax auditor determined that the Petitioner neither had salaried employees nor did it have any net income during the audit period and, therefore, the withholding tax and the corporate net income tax assessments were withdrawn.

2. The tax auditor also determined that the Petitioner's actual business franchise tax liability for the period of January 1, 2002 through December 31, 2004, was revised resulting in a lower amount, interest through September 30, 2005, and additions to tax, for a total revised liability.

3. The tax auditor further determined that Petitioner's actual purchasers' use tax liability for the period of October 1, 2000 through June 30, 2005, was revised resulting in a lower amount, interest through September 30, 2005, and no additions to tax, for a total revised liability.

4. The tax auditor also determined that Petitioner's actual consumers' sales and service tax liability for the period of January 1, 2002 through June 30, 2005, was revised resulting in a lower amount, interest through September 30, 2005, and additions to tax, for a total revised liability.

5. It should be noted that with respect to the business franchise tax detailed audit for the year 2001, the same was not included because it was beyond the three (3) year statute of limitations.

6. It should also be noted that prior to the hearing, Petitioner agreed to allow Respondent to audit periods beyond those set forth in the earlier estimated assessments.

DISCUSSION

The only issue is whether the Petitioner has shown that the estimated tax assessments, which were not withdrawn, are incorrect and contrary to law, in whole or in part.

In this case, Petitioner voluntarily agreed to make available all of its books and records so that the tax auditor could get a precise look at its tax reporting practices.

Upon review, it was determined that the withholding and corporate income tax assessments were not applicable and that the business franchise tax, purchasers' use tax and the consumers' sales and service tax assessments should be drastically revised.

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 carried the burden of proof with respect to its contention that the estimated tax assessments should be supplanted by the more detailed audit findings. *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 corporate net income tax assessment issued against the Petitioner for the period of January 1, 2001 through December 31, 2003, for tax, interest, and additions to tax, should be and is hereby **VACATED**, and the Petitioner owes no further corporate net income tax liability for the period in question.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the withholding tax assessment issued against the Petitioner for the period of January 1, 2000 through December 31, 2004, for tax, interest, and additions to tax, should be and is hereby **VACATED**, and the Petitioner owes no further withholding tax liability for the period in question.

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, 2001 through December 31, 2003, for tax, interest, and additions to tax, should be and is hereby **MODIFIED** in accordance with the above Conclusions of Law for **revised tax**, for the period of January 1, 2002 through December 31, 2004, interest, on the revised tax through September 30, 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 modified business franchise tax assessment until this 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 April 1, 2002 through February 28, 2005, for tax, interest, and additions to tax, should be and is hereby **MODIFIED** in accordance with the above Conclusions of Law for **revised** tax for the period of October 1, 2000 through June 30, 2005, interest on the revised tax, through September 30, 2005, and no 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 modified purchasers' use tax assessment until this liability is fully paid.

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, 2002 through February 28, 2005, for tax, interest, and additions to tax, should be and is hereby **MODIFIED** in accordance with the above Conclusions of Law for **revised** tax for the period of January 1, 2002 through June 30, 2005, interest on the revised tax through September 30, 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 modified consumers' sales and service tax assessment until this liability is fully paid.