

**SANITIZED DECISION – DOCKET NO. 05-572 C – GEORGE V. PIPER, ALJ –
SUBMITTED for DECISION on FEBRUARY 13, 2006 – ISSUED on FEBRUARY
21, 2006**

SYNOPSIS

CONSUMERS’ SALES AND SERVICE TAX—BURDEN OF PROOF NOT MET -- In the absence of written proof from the Petitioner that the Petitioner’s business activities were not subject to collection of consumers’ sales and service tax during the audit period, the assessment must be upheld in its entirety.

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”) conducted an audit of the books and records of the Petitioner. Thereafter, on September 2, 2005, the Director of this Division of the Commissioner’s Office issued a consumer’s 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. This assessment was for the period of January 1, 2000 through June 30, 2005, for tax, interest, through, September 30, 2005, and no additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner.

Thereafter, by mail postmarked October 28, 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] and 11-10A-9(a)-(b) [2002]*.

In due course the Chief Administrative Law Judge determined that because the appearance of the Petitioner in person was not necessary, the matter should be decided upon documents only, in lieu of holding an administrative hearing in person.

FINDINGS OF FACT

1. Petitioner is engaged in the business of providing web hosting, networking, and computer repair services.
2. From the inception of business until the first quarter of 2005, Petitioner did not collect and/or remit consumers' sales and service tax in the mistaken belief that said business activities were not subject to the tax.
3. In his petition for reassessment Petitioner argues that his tax account was apparently set up incorrectly by the Respondent through no fault of his.
4. Petitioner further asserts that at the time that his business was established, and again later, he was orally told by Respondent's employees that he was not subject to the collection of consumers' orders and service tax.
5. Petitioner finally asserted that, after one of his clients was audited in 2004, he immediately made arrangements to collect consumers' sales and service tax.

DISCUSSION

The only issue is whether the Petitioner has met his burden of proof in showing that the assessment is incorrect and contrary to law, in whole or in part.

Upon review this tribunal does not find any proof, such as a letter from the Respondent, proving that Petitioner was told that he was not subject to the collection of consumers' sales and services tax during the audit period.

In the absence of such correspondence, and given the fact that Petitioner's activities have always been subject to said tax, this tribunal has no recourse but to uphold the assessment in its entirety.

CONCLUSIONS OF LAW

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 his contention that the Respondent informed him on two occasions that his business activities were not subject to the collection of consumers' sales and service tax. *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 service tax assessment issued against the Petitioner for the period of January 1, 2000 through June 30, 2005, for tax, **interest, 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 continues to accrue** on this consumers' sales and service tax assessment until this liability is fully paid.