

**SANITIZED DECISION – 05-573 U – BY GEORGE V. PIPER, ALJ –
SUBMITTED for DECISION on SEPTEMBER 22, 2006 – ISSUED on OCTOBER
26, 2006**

SYNOPSIS

PURCHASER’S USE TAX -- BURDEN OF PROOF NOT MET --

Petitioner’s failure to present at hearing any credible evidence justifying its claim that the assessment is erroneous or otherwise invalid mandates that assessment be upheld *in toto*. 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

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 August 30, 2005, the Director of this Division of the Commissioner’s Office issued a purchaser’s use 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 15A of the West Virginia Code. The assessment was for the period of January 1, 2000 through June 30, 2005, for tax of \$, interest, through September 30, 2005, of \$, and additions to tax of \$, for a total assessed liability of \$. Written notice of this assessment was served on the Petitioner as required by law.

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].

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).

At the conclusion of the evidentiary hearing, the presiding administrative law judge advised Petitioner's counsel that if he wanted an additional hearing so that his client could appear and offer testimony concerning the assessment, a further hearing would be scheduled in Charleston, West Virginia.

Petitioner's counsel did not contact this tribunal about the need for a further hearing in this matter, and he did not submit a brief pursuant to the briefing schedule sent to the parties on July 7, 2006.

On September 22, 2006, Respondent's representative notified this tribunal by letter that she would not submit a reply brief because Petitioner had elected not to submit a brief in support of his petition for reassessment.

FINDINGS OF FACT

1. Petitioner is engaged in the business of renting real estate (apartments) to others.
2. During the audit period, Petitioner hired contract labor to perform maintenance work on his rental properties without paying or remitting purchaser's use tax in connection with performance of said contract labor.
3. To arrive at the amount of taxable services subject to purchaser's use tax, Respondent's tax auditor used a combination of Petitioner's federal tax returns, as well as checkbook entries, arriving at a thirty-six (36)-month average which he then spread over the entire audit period.

DISCUSSION

The only issue for decision is whether the Petitioner has shown that the assessment is erroneous or otherwise invalid.

In this case, Petitioner provided absolutely no evidence proving that Respondent's assessment was in any way erroneous or incorrect, other than to merely question, generally, the methodology employed by Respondent's tax auditor.

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 his contention that the purchaser's use tax assessment is erroneous or otherwise invalid. *See* W. Va. Code St. R. §§ 121-1-63.1 and 69.2 (Apr. 20, 2003).

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the purchaser's use tax assessment issued against the

Petitioner for the period of January 1, 2000 through June 30, 2005, 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 purchaser's use tax assessment until this liability is fully paid.