

**REDACTED DECISION -- 06-304 C -- BY ROBERT W. KIEFER, JR., ALJ --
SUBMITTED for DECISION on SEPTEMBER 15, 2008 -- ISSUED on OCTOBER 29,
2008**

SYNOPSIS

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 their 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 March 14, 2006, 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 consumer’s 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 April 30, 2006, 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. According to the Petitioner, the assessment was received on May 4, 2006.

Thereafter, by mail postmarked in May, 2006, received in the offices of the West Virginia Office of Tax Appeals on May 16, 2006, the Petitioner timely filed with this tribunal, a petition for reassessment. 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 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 or the Commissioner, in accordance with the provisions of W. Va. Code § 11-10A-10(a) [2002].

FINDINGS OF FACT

1. In its petition for reassessment, the Petitioner asserted that the State Tax Commissioner overestimated the amount of consumers' sales and service tax that was due, that he did not charge consumers' sales and service tax to his customers because he was not informed that he was required to do so, and that the correct amount due should be charged.

2. The grounds articulated by the Petitioner are inadequate to show that the assessment is erroneous, unlawful, void or otherwise invalid.

3. The Petitioner was provided with notice that he was required to appear at the evidentiary hearing and present evidence respecting the reasons he believed that the assessment was erroneous, unlawful, void or otherwise invalid.

4. The Petitioner did not appear at the time and place of the hearing and presented no evidence respecting any of his allegations.

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 him 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 his burden of proving that any assessment of taxes against him is erroneous, unlawful, void or otherwise invalid.

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the consumer's 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 \$_____, through April 30, 2006, and additions to tax in the amount of \$_____, totaling \$_____, should be and is hereby **AFFIRMED**.

Interest continues to accrue on this unpaid tax until this liability is fully paid.