

**REDACTED DECISION -- 06-601 C -- BY GEORGE V. PIPER, ALJ --  
SUBMITTED for DECISION on JANUARY 16, 2007 -- ISSUED on JANUARY 24,  
2007**

**SYNOPSIS**

**CONSUMERS' SALES AND SERVICE TAX -- TAXPAYER'S FAILURE TO CARRY BURDEN OF PROOF** -- The taxpayer's failure to appear at hearing or to otherwise present any evidence respecting the claim set forth in its petition for reassessment 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 October 15, 2006, the Accounts Monitoring Unit of the Internal Auditing Division ("the Division") of the West Virginia State Tax Commissioner's Office ("the Commissioner" or "the Respondent") 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, 2005 through December 31, 2005, for tax of \$, interest, through October 15, 2006, 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 21, 2006, 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) [2005].

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).

### **FINDINGS OF FACT**

1. In her petition for reassessment, Petitioner argues that she receives a ten (10) percent commission on all carport sales and that the company that she works for collects consumers' sales and service tax on the full amount of the sales price; therefore, she argues that she owes no consumers' sales and service tax

2. At the evidentiary hearing Respondent's counsel argued that Petitioner never filed any consumers' sales and service tax returns during the audit period and that, although Respondent has repeatedly attempted to contact Petitioner about her claimed exemption, Petitioner has never replied.

### **DISCUSSION**

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

In this case, Petitioner provided absolutely no evidence proving that the consumers' sales and service tax assessment is erroneous or otherwise invalid.

### **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 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 and 69.2 (Apr. 20, 2003).

2. The Petitioner in this matter has failed to carry its burden of proving that the assessment is erroneous, unlawful, void, or otherwise invalid.

### **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, 2005 through December 31, 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 tax assessment until the liability is fully paid.