

**REDACTED DECISION -- 06-746 U -- BY ROBERT W. KIEFER, JR., ALJ --
SUBMITTED for DECISION on MAY 17, 2007 -- ISSUED on JUNE 27, 2007**

SYNOPSIS

PURCHASERS' USE TAX -- TAXPAYER'S FAILURE TO CARRY BURDEN OF PROOF -- The failure of the taxpayer 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 December 15, 2006, the Unit Manager of the Accounts Monitoring Unit of the Internal Auditing "Division" of the West Virginia State Tax Commissioner's Office ("the Commissioner" or "the Respondent") issued an assessment for purchasers' use tax 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 January 1, 2005 through December 31, 2005, for tax of \$, interest, computed through December 15, 2006, of \$, and additions to tax of \$, for a total assessed purchasers' use tax liability of \$. According to the petition for reassessment, written notice of this assessment was served on the Petitioner on December 18, 2006.

Thereafter, by facsimile transmission dated December 19, 2006, received in the offices of this tribunal, the West Virginia Office of Tax Appeals, on December 19, 2006, the Petitioner timely filed a petition for reassessment. W. Va. Code §§ 11-10A-8(1) [2002] and 11-10A-9(a)-(b) [2005].

After a continuance of a first scheduled hearing to allow the Petitioner the opportunity to present evidence to the State Tax Commissioner supporting the contentions articulated in his petition, this Office, by letter dated March 21, 2007, advised the Petitioner that: 1) It was

incumbent upon the Petitioner to contact counsel for the Respondent and conduct a counsel conference; 2) That the Petitioner might avoid the necessity of a hearing by filing the necessary tax returns with the State Tax Commissioner; and 3) The evidentiary hearing was scheduled. This notice of the counsel conference and evidentiary hearing was served upon the Petitioner, as evidenced by United States Postal Service Form PS 3811, August 2001, Domestic Return Receipt (the "Green Card") signed for by Petitioner's sole owner.

At the time scheduled for convening the evidentiary hearing, there was no appearance on behalf of the Petitioner. The evidentiary hearing was held, however, without an appearance on behalf of the Petitioner, in accordance with the provisions of W. Va. Code § 11-10A-10(a) [2002] and W. Va. Code. St. R. § 121-1-69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. In its petition for reassessment, the Petitioner asserted that all of its work was performed for a certain company which provided the Petitioner with a direct pay permit.

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

3. The Petitioner was provided with notice that it was required to appear at the evidentiary hearing and present evidence respecting the reasons it 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 its 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 its burden of proving that any assessment of taxes against it is erroneous, unlawful, void, or otherwise invalid.

DISPOSITION

WHEREFORE, it is 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 January 1, 2005, through December 31, 2005, for tax of \$, interest, computed through December 15, 2006, 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 continues to accrue** on this tax assessment until this liability is fully paid.