

**REDACTED DECISION -- 07-005 C -- BY ROBERT W. KIEFER, JR., ALJ --
SUBMITTED for DECISION on SEPTEMBER 15, 2008 -- ISSUED on NOVEMBER 21,
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 his petition for reassessment justifying his claim, combined with his failure to appear at a hearing and to present any evidence respecting his 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 November 15, 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 consumers’ 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, 2004, through December 31, 2005, for estimated tax in the amount of \$____, interest in the amount of \$____, computed through November 15, 2006, and additions to tax in the amount of \$____, for a total assessed tax liability of \$____. According to the petition for reassessment, written notice of this assessment was served on the Petitioner on November 17, 2006.

Thereafter, the Petitioner timely filed a petition for reassessment postmarked December 21, 2006, which was received in the offices of this tribunal, the West Virginia Office of Tax

Appeals, on January 3, 2007.¹ 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 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 his petition for reassessment, the Petitioner asserted that he did not sell “anything,” presumably meaning tangible personal property.

2. The Petitioner asserted that he only had a handyman’s license.

3. The Petitioner further asserted that he believed he should be exempt from consumers’ sales and service tax.

4. Even if supported by competent evidence, the grounds articulated by the Petitioner would not be sufficient to show that the assessment is erroneous, unlawful, void or otherwise invalid.

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

6. The Petitioner was provided with notice at his last known address 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.

¹ The Petitioner also forwarded to this Office a petition for refund for periods other than the ones which are the subject of this matter. That petition was returned to the Petitioner because it was deficient in a number of respects. The Petitioner neither corrected the deficiencies in said petition for refund nor filed it with this Office.

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 consumers' sales and service tax assessment issued against the Petitioner for the period of January 1, 2004, through December 31, 2005, for estimated tax in the amount of \$____, interest in the amount of \$____, computed through November 15, 2006, and additions to tax in the amount of \$____, for a total assessed tax liability of \$____, should be and is hereby **AFFIRMED**.