

**REDACTED DECISION—08-023 C, 08-024 U—BY MICHELE DUNCAN BISHOP,
CALJ—SUBMITTED FOR DECISION on NOVEMBER 16, 2010 —ISSUED on
DECEMBER 22, 2010.**

OVERVIEW

The petitioner filed petitions for reassessment related to assessments issued by the State Tax Department for the periods including July 1, 2004 through July 31, 2006, and July 1, 2004, through December 31, 2006. The first assessment was for consumers sales tax, together with interest, for a total of \$____, and the second was for purchasers use tax, together with interest and additions in the total amount of \$____. Both copies provided to the Office of Tax Appeals were unsigned and undated.

FINDINGS OF FACT

1. A prehearing conference was conducted on June 29, 2010.
2. The evidentiary hearing was conducted on November 16, 2010. The petitioner did not appear.
3. The Office of Tax Appeals has received no communication from the petitioner since that time, and its absence from the evidentiary hearing remains unexplained.
4. The petitioner has submitted no evidence in support of its position.

5. On or about August 16, 2010, the petitioner remitted a check in the amount of \$____ to the State Tax Department.¹ This number represents the tax assessed by the State Tax Commissioner, exclusive of interest. The petitioner did not remit the accumulated interest of \$_____.

DISCUSSION

In a hearing before the West Virginia Office of Tax Appeals, the burden of proof is on the petitioner to show that any assessment of tax against him is erroneous, unlawful, void, or otherwise invalid. W.Va. Code § 11-10A-10(e) [2002]. The respondent appeared, by counsel, and represented that the underlying assessments had been paid, but interest remained due.

The petitioner's assertions articulated on the petition are that the auditor of the State Tax Department "fabricated" information upon which the assessment was based. Since the filing of the petition, however, the petitioner forwarded no evidence in support of that position, and failed to appear at the scheduled hearing to present any evidence. The assessment appearing valid on its face, the petitioner has failed to meet its burden of proof in this matter.

DETERMINATION

1. The petitioner has failed to carry his burden of proof.
2. The two assessments of the West Virginia State Tax Department, one for July 1, 2004 through July 31, 2006 and one for July 1, 2004 through December 31, 2006, together with accrued and accruing interest, are **AFFIRMED**.

¹ The check was mistakenly directed to the Office of Tax Appeals, which office forwarded the check to the State Tax Department.