

REDACTED DECISION – DOCKET # 08-260 C – BY ROBERT W. KIEFER, JR., ALJ – SUBMITTED FOR DECISION on MAY 26, 2009 – ISSUED on May 29, 2009.

SYNOPSIS

CONSUMERS SALES AND SERVICE TAX – TAXPAYER’S FAILURE TO CARRY BURDEN OF PROOF -- The failure of the taxpayer to articulate adequate grounds in her petition for reassessment justifying her claim, combined with her failure to appear at a hearing and to present any evidence respecting her 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 May 5, 2008, the Director of the Compliance Division of the West Virginia State Tax Commissioner’s Office (“the Commissioner”) issued an assessment for consumers sales and service tax against the Petitioner, an individual, in her capacity as an Officer of a corporation. 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 ending May 31, 2005,* for tax in the amount of \$____, interest in the amount of \$____, and additions to tax in the amount of \$____, for a total assessed liability of \$____. According to the petition for reassessment, written notice of this assessment was served on the Petitioner on November 1, 2008.

Thereafter, by mail postmarked November 20, 2008, received in the offices of this tribunal, the West Virginia Office of Tax Appeals, on November 21, 2008, the Petitioner timely filed a petition for reassessment. W. Va. Code §§ 11-10A-8(1) [2007] and 11-10A-9 [2005].

The Petitioner appeared at the prehearing conference in this matter, which was held on February 4, 2009. She asserted that she was not an officer during the period that the underlying

* The assessment does not identify the beginning date of the assessment period.

corporation incurred the liability, but was an officer only for a short period of time subsequent to the assessment period. Counsel for the Respondent and the undersigned Administrative Law Judge advised the Petitioner of the type of evidence that she might present at an evidentiary hearing to support her assertions. The evidentiary hearing was continued until March 10, 2009.

For good cause shown, the Petitioner did not appear at the evidentiary hearing on March 10, 2009. The matter was continued until May 26, 2009.

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 her petition for reassessment, the Petitioner did not assert that she and her husband were not officers of the corporation, but that another individual was responsible for the liability incurred by the corporation.

2. In the absence of supporting evidence, 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 she was required to appear at the evidentiary hearing and present evidence respecting the reasons she believed that the assessment was erroneous, unlawful, void or otherwise invalid.

4. The Petitioner contacted this Office on the day of the hearing, stating that she would not appear at the hearing, but offered no explanation for why she did not intend to appear.

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

6. The Respondent appeared, by counsel, and presented sufficient evidence to show that the Petitioner was an officer of the corporation that accrued the underlying assessment.

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 on the Petitioner to show that any assessment of tax against her 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 her burden of proving that the assessment of taxes against her 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 officer liability assessment issued against the Petitioner for the period ending May 31, 2005, for tax in the amount of \$____, interest in the amount of \$____, and additions to tax in the amount 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 consumers sales and service tax officer liability assessment until this liability is fully paid.