

REDACTED DECISION – DOCKET # 9-258 F – BY GEORGE V. PIPER, ALJ – SUBMITTED FOR DECISION on AUGUST 20, 2009 – ISSUED on SEPTEMBER 16, 2009.

SYNOPSIS

BUSINESS REGISTRATION TAX -- CERTIFICATE REVOKED -- The repeated willful refusal or neglect to file state tax returns or to remit state taxes when due authorizes revocation of a registrant's business registration certificate, pursuant to the provisions of W.Va. Code § 11-12-5(b), as last amended. *See also* W. Va. Code § 11-10A-8(3) or (5), as last amended.

FINAL DECISION IN SHOW CAUSE PROCEEDING

On July 27, 2009 the Assistant Director of the Compliance Division of the West Virginia State Tax Commissioner's Office (the Commissioner), by his agent, personally served upon the registrant, a "Notice of Intent to Revoke Business Registration Certificate," wherein the Commissioner gave notice that he intended to revoke the West Virginia business registration certificate of registrant, effective August 20, 2009. The revocation notice was based on: Registrant's repeated failure to remit all reported consumers sales and service tax collected from customers from June 2000 through June 2008 and Registrant's repeated failure to remit all combined sales and use taxes due from July 2008 through June 2009. The notice indicated revocation would not occur if all delinquent taxes due the Commissioner were paid prior to August 20, 2009. That same Notice also informed the Registrant that a "show cause" hearing was scheduled before this tribunal for Thursday, August 20, 2009, at 2:00 p.m., E.D.T., at which hearing the Registrant would have the opportunity to show cause why its business registration certificate should not be revoked as proposed by the Commissioner.

At the scheduled show cause hearing the Commissioner showed that the Registrant owed at least \$_____ of delinquent consumers sales and service tax, interest, and additions to tax and at least \$_____ of delinquent combined sales and use tax, interest and additions to tax. The Commissioner further showed that the Registrant had eleven unreleased tax liens, totaling \$_____, filed against it for unpaid consumers sales and service taxes and combined sales and use taxes, which liens were on record in the County Clerk's Office of a County in West Virginia. The Commissioner further showed that Registrant had written a series of bad checks to the Tax Commissioner totaling \$_____ during the past eight months.

The Registrant testified that he planned to make good on the bad checks within a few days although he had several bad check warrants still pending and that he had applied for a bank loan in order to pay \$_____ more on what he still owed. Registrant requested that the presiding administrative law judge stay the decision for sixty days so that the Registrant could make these payments; however Registrant was informed that the business registration tax statute does not allow for such a stay unless the Commissioner so agrees. Commissioner's counsel refused to agree to Registrant's request. See W.Va. Code § 11-12-5(b)(2).

Because the evidence shows that the Registrant did repeatedly and willfully convert for its own personal use consumers sales and service tax and combined sales and use tax collected on behalf of the State of West Virginia, this tribunal does hereby APPROVE the Commissioner's REVOCATION of the Registrant's business registration certificate, effective September 22, 2009. See W. Va. Code § 11-12-5(b) (1) (D), as last amended; W. Va. Code § 11-10A-8(3) or (5), as last amended.

WEST VIRGINIA OFFICE OF TAX APPEALS

By: _____

George V. Piper
Administrative Law Judge

Date Issued