

**REDACTED DECISION – DOCKET # 09-375 F – BY GEORGE V. PIPER, ALJ –
SUBMITTED FOR DECISION on DECEMBER 4, 2009 – ISSUED on
DECEMBER 23, 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 November 3, 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 manager of an LLC, (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 December 24, 2009. The revocation notice was based on: Registrant's repeated failure to remit all consumers sales and service tax collected from customers from August 2007 through June 2008; Registrant's repeated failure to file all combined sales and use tax returns and to remit all combined sales and use tax collected from customers from July 2008 through October 2009; and Registrant's repeated failure to remit all withholding taxes due from September 2007 through September 2009. The notice indicated revocation would not occur if all delinquent tax returns were filed and all taxes due the Commissioner were paid prior to December 4, 2009. That same Notice also informed the Registrant that a "show cause" hearing was scheduled before this tribunal for Friday, December 4, 2009, at 10:00 a.m., E.S.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; at least \$____ of delinquent combined sales and use tax, interest and additions to tax; and at least \$____ of delinquent withholding tax, interest and additions to tax. The Commissioner further showed that the Registrant had ten unreleased tax liens, totaling \$____, filed against it for unpaid consumers sales and service taxes; combined sales and use taxes and withholding 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 presented two bad checks to the Commissioner in August and November 2009.

The revenue agent testified that during the past several years she made numerous visits to Registrant, but Registrant repeatedly failed to pay the delinquent amounts. Although Registrant testified that he was ultimately responsible for the tax liability he blamed his manager for failing to keep taxes paid.

Because the evidence shows that the Registrant did repeatedly and willfully convert for its own personal use consumers sales and service tax, combined sales and use tax as well as withholding taxes 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 December 24, 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.