

REDACTED DECISION – DOCKET # 10-014 F – BY GEORGE V. PIPER, ALJ – SUBMITTED FOR DECISION on MARCH 4, 2010 – ISSUED on MARCH 18, 2010.

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 January 19, 2010 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 President of a corporation, 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 the corporation effective March 20, 2010. The revocation notice was based on: Registrant's repeated failure to file consumers sales and service tax returns and to remit all reported consumers sales and service taxes collected from customers from April 2002 through June 2008; Registrant's repeated failure to file combined sales and use tax returns and to remit all combined sales and use taxes due from July 2008 through October 2009; Registrant's repeated failure to pay withholding taxes due from January 2003 through September 2009; Registrant's failure to pay business registration taxes due June 2009; Registrant's repeated failure to file corporate/franchise tax returns and to pay corporate/franchise taxes due from December 2003 through December 2007; and Registrant's failure to file purchasers use tax returns from July 2005 through January 2008 and to pay purchasers use taxes due for June 2005. The notice indicated revocation would not occur if all delinquent state tax returns were filed and all taxes due the Commissioner were paid prior

to February 4, 2010. That same Notice also informed Registrant that a “show cause” hearing was scheduled before this tribunal for Thursday, February 18, 2010 at 1:00 p.m., E.S.T., at which hearing Registrant would have the opportunity to show cause why its business registration certificate should not be revoked as proposed by the Commissioner.

As per a motion to continue the hearing for cause by Registrant’s counsel with the concurrence of Commissioner’s counsel the matter was continued to March 4, 2010 at 1:00 p.m. E.S.T.

At the rescheduled 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; at least \$_____ of delinquent withholding tax, interest, and additions to tax; at least \$_____ of delinquent business registration tax and penalty; at least \$_____ of delinquent corporate/franchise tax, interest and additions to tax; and at least \$_____ of delinquent purchasers use tax, interest and additions to tax. The Commissioner further showed that Registrant had sixteen unreleased tax liens, totaling \$_____, filed against its business for unpaid consumers sales and service taxes and withholding taxes, which liens were on record in the County Clerk’s Office of a county in West Virginia.

The revenue agent testified that he had worked with Registrant for five years in an attempt to correct Registrant’s tax deficiencies, but that Registrant had failed to take corrective action. The revenue agent further testified that Registrant has failed to live up to three prior payment plans and that the last one resulted from a prior revocation proceeding in which Registrant never signed nor returned the payment plan agreement.

Registrant testified that he recently paid the sum of \$_____ to be applied against his outstanding tax liability; that he does own real estate in a county in West Virginia

worth \$____, less \$____ owed, for which he is seeking a buyer; and that he owns a dump truck, other equipment, and a boat, all of which could be sold to liquidate the tax debt.

Registrant's counsel requested that the presiding administrative law judge stay the decision so that Registrant could raise additional funds; however he was informed that the business registration statute does not allow for such a stay unless the Commissioner agrees. Commissioner's counsel refused to agree to the requested stay. See W.Va. Code § 11-12-5(b) (4).

Because the evidence shows that Registrant did repeatedly and willfully fail to file consumers sales and service tax and combined sales and use tax returns, and did repeatedly and willfully convert for its own personal use consumers sales and service tax, combined sales and use tax, and withholding tax that he collected on behalf of the State of West Virginia, this tribunal does hereby APPROVE the Commissioner's REVOCATION of Registrant's business registration certificate, effective March 20, 2010. 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.