

**REDACTED DECISION—10-202 F—BY GEORGE V. PIPER, ALJ—
SUBMITTED FOR DECISION on JUNE 1, 2010 —ISSUED on JUNE 30, 2010.**

SYNOPSIS

BUSINESS REGISTRATION TAX -- SUCCESSOR IN BUSINESS FINDING APPLICABLE TO SHOW CAUSE PROCEEDINGS UNDER BUSINESS REGISTRATION TAX STATUTE -- Because W.Va. Code § 11-12-5 (b)(1)(C) allows the tax commissioner to cancel a business registration certificate if a registrant willfully refused or neglected to pay any tax, additions to tax, penalties or interest or any part thereof, the unpaid tax debts of a successor in business are properly the subject of a show cause proceeding even if Registrant's own taxes are not delinquent.

BUSINESS REGISTRATION TAX -- CERTIFICATE REVOKED -- The repeated willful refusal or neglect to file state tax returns or to remit state taxes when due or overdue 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 May 6, 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 owner of 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 July 1, 2010.

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 June 1, 2010. That same notice also informed Registrant that a "show cause" hearing was scheduled before this tribunal for Tuesday, June 1, 2010 at 10:00 a.m., E.D.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.

At the scheduled show cause hearing the commissioner showed that, as evidenced by a show cause decision, State's Exhibit 2, the business registration certificate of a corporation was revoked, effective May 21, 2008, because of having repeatedly and willfully converted for its own personal use consumers sales and service tax and withholding tax collected or withheld on behalf of the State of West Virginia.¹

Commissioner further showed as evidenced by an administrative decision dated January 27, 2010 (never appealed), State's Exhibit 3, that having purchased, acquired or otherwise succeeded to all or substantially all of the business assets of a corporation, Registrant is liable for all of its tax debts, interest and additions to tax as its successor or successor in business by reason of that provision contained in W.Va. Code §11-10-11(f).

Registrant testified that since beginning business as Registrant all tax returns have been filed and tax payments made. Registrant argued that this show cause proceeding should only concern itself with the debts of Registrant and not what was owed by the corporation. Registrant also testified that she had paid some of the delinquent taxes; however no proof of payment was presented.

W.Va. Code § 11-12-5(b)(1)(C) allows the tax commissioner to cancel a business registration certificate if a registrant willfully refused or neglected to pay any tax, additions to tax, penalties or interest, or any part thereof. Previously, Registrant was determined to be a successor in business to the corporation and liable for all of its tax debts including additions to tax and interest. Accordingly, having willfully converted for its own personal use, consumers sales and services tax and withholding tax which

¹ At that proceeding Registrant appeared as the president of the corporation and testified that she knew that she owed all of the delinquent taxes and that it was wrong for her to have kept the taxes.

remains unpaid, Registrant is properly the subject of the show cause proceeding as set forth in W.Va. Code § 11-12-5(b) even if Registrant's own taxes are not delinquent.

Because the evidence shows that Registrant, as successor in business to the corporation, did repeatedly and willfully convert for its own personal use consumers sales and service tax that it collected on behalf of the State of West Virginia, and withholding tax that was due the State of West Virginia, this tribunal does hereby APPROVE the Commissioner's REVOCATION of Registrant's business registration certificate, effective July 5, 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.