

**REDACTED DECISION—10-454 F—BY GEORGE V. PIPER, ALJ—
SUBMITTED FOR DECISION on DECEMBER 10, 2010 —ISSUED on
DECEMBER 29, 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 November 17, 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 authorized representative 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 January 10, 2011. The revocation notice was based on: Registrant's repeated failure to remit all reported consumers sales and service taxes collected from customers from July 2006 through May 2008; Registrant's repeated failure to remit all combined sales and use taxes due from July 2008 through September 2010; Registrant's failure to file a withholding tax return due for June 2009 and Registrant's failure to pay withholding taxes due for June 2009 and Registrant's repeated failure to pay tobacco taxes due from June 2003 through October 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 December 10, 2010. That same notice also informed Registrant that a "show cause" hearing was scheduled before this tribunal for Friday, December 10, 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.

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, at least \$____ of delinquent withholding tax, interest, and additions to tax and at least \$____ of delinquent tobacco tax, interest and additions to tax. The commissioner further showed that Registrant had seven unreleased tax liens, totaling \$____, filed against its business for unpaid combined sales and use taxes, and tobacco 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 made several visits to Registrant in an attempt to get the delinquent amounts paid but was not successful. The revenue agent further testified that he had levied Registrant's bank account on several occasions and that Registrant had previously defaulted on payment plan agreements.

Registrant's representative testified that although Registrant never petitioned any of the large delinquencies which were found by audit she still believes the tobacco assessments were not correct. She further testified that if Registrant's business registration certificate was revoked the tax commissioner would not get any of the taxes repaid.

Because the evidence shows that Registrant did repeatedly and willfully convert for its own personal use consumers sales and service tax, and combined sales and use tax

that it collected on behalf of the State of West Virginia and tobacco tax that was due the State of West Virginia, this tribunal does hereby AFFIRM the commissioner's revocation of Registrant's business registration certificate, effective January 10, 2011. W.Va. Code § 11-12-5(b) (1) (D), as last amended; W. Va. Code § 11-10A-8(3) or (5), as last amended.