STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
AIRPORT INDUSTRIAL PARK	:	DECISION
for Revision of a Determination or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the period September 1, 1972 through November 30, 1982.	:	

Petitioner Airport Industrial Park, P.O. Box 1011, Buffalo, New York 14240-1011 filed an exception to the determination of the Administrative Law Judge issued on December 7, 1989 with respect to its petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 1972 through November 30, 1982 (File No. 800714). The Division of Taxation also filed an exception. Petitioner appeared by Mattar, D'Agostino, Kogler & Runfola (Joseph F. Reina and Lawrence J. Mattar, Esqs., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Deborah J. Dwyer, Esq., of counsel).

Petitioner filed a brief on exception. The Division of Taxation filed a letter in lieu of a brief. Oral argument, at petitioner's and the Division of Taxation's request, was heard on October 17, 1990.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUES

I. Whether certain purchases made by petitioner during the audit period constituted purchases of services of installing property which, when installed, constituted a capital improvement to petitioner's property, thereby exempting said purchases from the imposition of sales tax.

II. Whether certain purchases made by petitioner during the audit period constituted purchases of secretarial/clerical services not subject to tax.

III. Whether the period November 10, 1972 through November 30, 1979 was within the period of limitation for audit and assessment.

IV. If so, whether the audit method employed by the Division of Taxation with respect to the period November 10, 1972 through November 30, 1979 has been shown to be unreasonable or the result erroneous.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

Petitioner, Airport Industrial Park, is a partnership which, on November 10, 1972, acquired a 20-acre parcel of land in Cheektowaga, New York. The property, vacant at the time of petitioner's acquisition, was improved by a primary structure of approximately 200,000 square feet and auxiliary structures totalling 75,000 square feet. The primary structure, which was originally an airplane hangar, was built in the 1940's.

Petitioner acquired the property in question for the purpose of creating an industrial park. Petitioner solicited commercial tenants by advertising space for rental and by offering to subdivide and construct space to suit the needs of the particular tenant. For example, petitioner erected walls, dropped ceilings, installed plumbing, installed doors, segregated utilities and, in some cases, installed loading docks and separate heating systems.

As noted, when petitioner acquired the property in question it was vacant. Between the time of acquisition and approximately September of 1979, it was about 60% vacant. In September 1979, petitioner acquired its biggest tenant, Arcadia Graphics, Inc., which leased 135,000 square feet of space in the main building. From this point through the end of the audit period (November 30, 1982) petitioner's property was approximately 95% to 100% occupied.

Except for Arcadia Graphics, petitioner's tenants generally rented about 5,000 to 15,000 square feet.

Petitioner contracted with two affiliated corporations, Buffalo Metals Recycling Co. and Industrial Refining Corp., to provide some portion of the labor for the construction work on the premises which was required to meet tenant specifications. These two corporations were owned, in whole or in part, by a partner or partners in petitioner. Petitioner made all purchases of materials with respect to such construction. Industrial Refining Corp. employees also performed some repair and maintenance services for petitioner.

Petitioner had a minimal number of employees. It employed a janitor, an individual to oversee the operation of the boiler system, and some part-time summer employees. Petitioner contracted with Industrial Refining Corp. for secretarial/clerical services.

Petitioner generally leased space to its tenants for terms of 3 to 5 years with renewal options. The leases provided for the lessees to pay rent based upon square footage rental, and the lessee's pro rata share of taxes and insurance. Lessees paid their own utilities.

Petitioner sold the property in question in 1986. Over its 14-year period of ownership, petitioner redeveloped the entire property to suit the needs of its various tenants.

The audit herein was triggered by the Division's discovery, on separate audit, that petitioner had issued a resale certificate to a vendor[1] in order to purchase tangible personal property or services without paying sales tax. The Division obtained a copy of a resale certificate dated December 23, 1976 which listed petitioner as purchaser and was signed on petitioner's behalf by "Linda Rudnick, Secretary". Moreover, the resale certificate indicated that it was a "blanket certificate". Attached to the resale certificate when it came into the possession of the Division's auditor was an invoice dated March 28, 1979, issued by the same vendor to petitioner. The amount of the invoice was $1,540.00 and the description set forth thereon was as follows: "CREDIT MEMO -- To relieve accounts receivable to Airport Park for work performed in lieu of rent."

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[1]The name of the vendor is not disclosed herein in accordance with the secrecy requirements of Tax Law § 1146(a).

Having come into possession of the resale certificate, the Division next determined from a review of its own records that petitioner was not registered pursuant to Tax Law § 1134(a) as a "person purchasing or selling tangible personal property for resale" or as a "person required to collect any tax imposed by [Article 28]".

The Division subsequently contacted petitioner by a standard appointment letter which advised petitioner of the audit and requested access to "all books and records pertaining to your Sales Tax liability for the period under audit." The letter also indicated that the "period under audit" was "unlimited".

On audit, the Division's auditor reviewed petitioner's cash receipts journal, purchases journal, check disbursements journal, purchase invoices and sales invoices with respect to the period December 1, 1979 through November 30, 1982. The auditor also reviewed petitioner's State and Federal income tax returns for the years 1980 and 1981.

Upon review of the records noted above, the Division's auditor concluded that petitioner was not in the business of selling tangible personal property nor was petitioner in the business of providing services subject to sales tax.

In his review of petitioner's purchase invoices, the Division's auditor noted that no sales tax was charged on many of such invoices. Petitioner's representatives advised the Division's auditor that petitioner was engaged in substantial construction and rehabilitation of its property during the period under review (December 1, 1979 - November 30, 1982) and that many of its purchases of material and labor resulted in capital improvements to petitioner's real property. None of the invoices reviewed by the auditor had any notation specifically stating that the labor listed thereon resulted in a capital improvement.

The Division's auditor subsequently totaled invoices for material and labor for the period December 1, 1979 through November 30, 1982 upon which sales tax had not been paid. Material invoices totaled in this manner amounted to $152,671.42. Labor invoices totaled $149,051.01. The Division's auditor determined that said purchases, totaling $301,722.43, were properly subject to sales tax.

The $149,051.01 in labor purchases (noted above) determined taxable on audit were provided to petitioner by three entities: Bundy Real Estate ($1,300.00 in services provided); Buffalo Metals Recycling Co. ($28,723.00 in services provided); and Industrial Refining Corp. ($119,028.01 in services provided). The Division's auditor was aware that these three entities were owned in whole or in part by a partner or partners of petitioner.

The Division's auditor saw no resale certificates (other than the certificate referred to above) or certificates of capital improvement during the course of the audit. He did not contact any of the vendors that sold petitioner material or services to determine if petitioner had issued resale certificates or capital improvement certificates to such vendors to enable petitioner to make such purchases tax-free.

The auditor also reviewed petitioner's Federal income tax returns for the years 1980 and 1981. The 1980 return claimed $318,299.00 in leasehold improvements and $123,772.00 in repairs. The 1981 return claimed $114,133.00 in repairs. The amount of petitioner's claimed leasehold improvements for 1981, if any, was not made part of the record herein.

The Division's auditor also reviewed petitioner's check disbursements journal for the period January 1980 through August 1982. Included in petitioner's check disbursements journal was a "Repair and Maintenance" account which totaled $105,416.00 in check disbursements during the January 1980 through August 1982 period.

During the course of the audit, the Division's auditor requested access to petitioner's records dating back to its formation in 1972. Petitioner refused to provide such access.

Having determined that petitioner had made taxable purchases of $301,722.43 during the period December 1, 1979 through November 30, 1982, the Division's auditor determined that similar purchases were made by petitioner from the time of its formation through November 30, 1979. In the absence of any records from which he could determine the precise amount of such purchases, the auditor determined the quarterly average of audited taxable purchases during the period December 1, 1979 through November 30, 1982 and projected that average over each quarter to petitioner's formation. Specifically, the Division took the $301,722.43 in taxable

purchases found upon review of petitioner's records for the December 1, 1979 through November 30, 1982 period and divided that total by the 12 sales tax quarters which comprise that period to reach average taxable purchases per sales tax quarter of $25,143.00. From this purchase figure, the Division determined tax due per quarter of $1,760.01. The notices herein assessed $1,760.01 per quarter for the periods ended November 30, 1972 through November 30, 1979. The amounts assessed with respect to the periods ended February 28, 1980 through November 30, 1982 were premised upon actual purchases made (and determined subject to tax) during each of the respective periods as determined from the invoices.

On June 27, 1983, following the audit, the Division of Taxation issued to petitioner three notices of determination and demands for payment of sales and use taxes due which together assessed $72,160.76 in sales and use taxes due, plus penalty and interest, for the period September 1, 1972 through November 30, 1982.

During the course of the audit, the auditor was aware that petitioner was having capital improvement work done to its property. The auditor was aware that petitioner's property consisted primarily of an old airplane hangar and that petitioner was converting the interior of this structure into rental space for its tenants. In the auditor's opinion, his own general knowledge and petitioner's representation that capital improvement work was ongoing at petitioner's facility was insufficient, in light of the absence of documentation of such capital improvements, to justify the exemption of specific purchases from tax as work performed which resulted in a capital improvement.

Petitioner did not dispute that it made purchases of tangible personal property totaling $152,671.42 and labor totaling $149,051.01 during the period December 1, 1979 through November 30, 1982. Petitioner conceded that it did not pay sales tax on these purchases.

Petitioner also made purchases of materials and labor during the period September 1, 1972 through November 30, 1979. Petitioner also did not pay sales tax on these purchases. On audit, petitioner's representatives advised the Division's auditor that it had made such purchases.

Petitioner filed no sales tax returns with respect to the period September 1, 1972 through November 30, 1982.

Petitioner was advised by its attorney/accountant during the audit period that purchases of labor and materials which resulted in capital improvements were not subject to sales tax. Petitioner's attorney/accountant also advised that payments for labor between affiliated entities were not subject to sales tax. On audit, petitioner advised the auditor that it had made the tax-free purchases as noted above upon this advice.

Petitioner issued the resale certificate referred to above. Linda Rudnick, whose signature appears on the resale certificate, was an employee of petitioner at that time.

As noted above, Buffalo Metals Recycling Co. provided petitioner with $28,723.00 in services during the December 1, 1979 through November 30, 1982 period. These services consisted, in part, of trash removal services, including both routine trash removal and removal of construction debris. Buffalo Metals Recycling Co. also provided these services to petitioner during the September 1, 1972 through November 30, 1979 period.

Included among the $119,078.01 in services purchased by petitioner from Industrial Refining Corp. during the December 1, 1979 through November 30, 1982 period was $6,040.00 in clerical/secretarial services. Said services were performed by one Kathleen Swiatek. Industrial Refining Corp. charged petitioner $80.00 per week for these services through December 1981 and $100.00 per week thereafter.

The $152,671.42 in purchases other than from the affiliated companies consisted of electrical parts, hardware, building materials, tools, equipment rental, fittings, automotive parts and repairs, cement, and office supplies.

At hearing, petitioner introduced evidence to establish that many of the labor purchases deemed by the Division to be subject to tax were actually purchases of services which resulted in capital improvements to petitioner's property. In order to prove its contention, petitioner's controller reviewed the same labor and materials invoices reviewed by the Division's auditor and determined by the auditor to be subject to tax. The controller then apparently matched up

materials purchases and labor purchases on a month-by-month basis and concluded that purchases of construction materials which he determined had been used on particular projects coincided with labor expenditures. The controller then reviewed all leases between petitioner and its tenants which took effect during the December 1979 through November 1982 period to review specific modifications or renovations required for particular tenants. In some cases, the leases had specific lists of requirements. The controller also reviewed the individual laborer's time cards (contained in the records of Industrial Refining Corp.). These time cards gave some indication of where the individuals were working on a given date. The controller also spoke with certain of the individuals named in the labor invoices. Finally, the controller physically walked through the premises to determine the nature of specific projects. At hearing, petitioner introduced into evidence a summary of the controller's review (petitioner's Exhibit "3"). This summary sets forth, with brief descriptions of the particular project, labor invoices representing work performed during the December 1979 through November 1982 period determined by petitioner to have resulted in capital improvements.

The controller was hired by petitioner in 1983, following the completion of the audit herein.

OPINION

The Administrative Law Judge concluded that petitioner failed to establish that the disputed labor purchases resulted in capital improvements. The Administrative Law Judge upheld the expansion of the audit by the Division of Taxation (hereinafter the "Division") to periods prior to the initial three year audit period and the indirect method used by the Division to estimate tax due for those periods. However, he canceled the assessment for the period September 1, 1972 because petitioner did not purchase the property until November 10, 1972. In addition, the Administrative Law Judge found that the Division had improperly assessed tax on petitioner's purchases of secretarial/clerical services.

Petitioner excepts to the Administrative Law Judge's conclusions that the labor purchases did not result in capital improvements, that the Division was entitled to expand the audit period, and that the methodology used by the Division to estimate petitioner's liability for the expanded audit period was proper.

The Division excepts to the language used by the Administrative Law Judge to determine that the Division improperly assessed tax on petitioner's purchases of secretarial/clerical services, but not to the resulting modification to the assessment.

We uphold the determination of the Administrative Law Judge.

We first address whether petitioner met its burden of establishing that its labor purchases resulted in capital improvements.

Tax Law § 1105(c)(3)(iii) excepts from tax the services of installing tangible personal property which "when installed, will constitute an addition or capital improvement to real property, property or land, . . . as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this chapter."

Tax Law § 1101(b)(9)(i) defines "capital improvement" as:

> "An addition or alteration to real property which:
>
> "(A) Substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and
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> "(B) Becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and
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> "(C) Is intended to become a permanent installation."

Tax Law § 1132(c) states in part that:

> "For the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts for property or services of any type mentioned in subdivision (a), (b), (c) and (d) of section eleven hundred five, . . . are subject to tax until the contrary is established, and the burden of proving that any receipt, . . . is not taxable hereunder shall be upon the person required to collect tax or the customer."

A taxpayer must adequately document the disputed activity that a taxpayer asserts is not subject to tax in order for a taxpayer to meet its burden of proof under Tax Law § 1132 (see,

Matter of Sol Wahba v. New York State Tax Commn., 127 AD2d 943, 512 NYS2d 542, 543; Matter of On the Rox Liqs. v. State Tax Commn., 124 AD2d 402, 507 NYS2d 503, 505, lv denied 69 NY2d 603, 512 NYS2d 1026). As we stated in Matter of Dacs Trucking (Tax Appeals Tribunal, March 21, 1991):

> "The language of Tax Law § 1132(c) is clear: all receipts of the described types (including the receipts at issue here) are presumed to be taxable until the contrary is established and the burden of proving that any receipt is not taxable is on the taxpayer. The purpose of this section is contained in the section itself so it need not be inferred; it is to allow for the proper administration of the tax and to prevent tax evasion. Once the Division has identified receipts for property or services of the types indicated for which tax has not been paid, this section does not impose on the Division a further burden to show that each of the taxpayer's receipts are in fact taxable (see, Matter of Koren-Di Resta Constr. Co. v. State Tax Commn., 138 AD2d 909, 526 NYS2d 654, lv denied 72 NY2d 805, 532 NYS2d 755; Matter of Mendon Leasing Corp. v. State Tax Commn., 135 AD2d 917, 522 NYS2d 315, lv denied 71 NY2d 805, 529 NYS2d 276; Matter of On the Rox Liqs. v. State Tax Commn., 124 AD2d 402, 507 NYS2d 503, lv denied 69 NY2d 603, 512 NYS2d 1026)."

On the record presented by petitioner in this case, we conclude that petitioner has failed to meet its burden of proof. Petitioner claims that it purchased services for the installation of property which, when installed, constituted capital improvements. Petitioner does not argue that all of its purchases were nontaxable or that the records presented to the auditor in and of themselves established the nontaxability of its purchases. Rather, petitioner urges acceptance of its own reclassification of its purchases into taxable and nontaxable categories. Petitioner relies on the testimony of its controller who presented at the hearing his reconstruction of the activities associated with the purchases at issue. Since the controller had no personal knowledge of petitioner's activities during the audit period, his testimony was based on his review of records of petitioner and affiliated corporations which performed the services, and conversations with some of the persons who performed the services concerning their recollections of what work was performed when. The controller summarized his conclusions and recalculated the assessment based upon his summary. Petitioner asks that the controller's recalculation be upheld as the assessment here.

We agree with the Administrative Law Judge that although it appears that activities which resulted in capital improvements took place on petitioner's property during the ten year audit period, petitioner's proof fails to establish the necessary connection between specific purchases of services and specific capital improvements required to exempt its purchases from tax. The controller's testimony and his summary are no more than an estimate made considerably after-the-fact of what services in the controller's opinion were subject to tax. He was admittedly reconstructing events that had occurred several years before using information from various sources. Although he testified in general terms as to the method he used to make his reconstruction, none of the original documents he used were introduced into evidence (other than some invoices which it was conceded were insufficient in and of themselves to establish that the services performed resulted in a capital improvement). Nor were the documents he used identified other than in general terms, i.e., leases, time cards. In addition, none of the individuals whom it is alleged performed the capital improvement work testified at the hearing.

Given the highly technical nature of capital improvements and the possibility of varying tax results depending on the facts of the particular activity under review, the controller's analysis and general testimony are insufficient to establish the nontaxability of any particular purchase. Some tenant improvements which may require the purchase of construction material and the generation of construction debris may not be capital improvements under the Tax Law (see, Matter of Merit Oil of New York v. New York State Tax Commn., 124 AD2d 326, 508 NYS2d 107, 109 [where fuel tanks, piping, canopies over fuel pumping area, cashier's booths, storage buildings and concrete parking areas were held not to be capital improvements because they were not intended to be permanent]; Matter of Raised Computer Floors v. Chu, 116 AD2d 958, 498 NYS2d 288, 289, lv denied 68 NY2d 606, 506 NYS2d 1031 [where raised floors made of steel pedestals and flooring installed for tenants were found not to be capital improvements because they were not intended to be permanent]; Matter of Dacs Trucking, supra). Although the controller's summary states in general terms the work performed for a tenant, i.e., "Completion of make ready of 135,000 square feet," (Petitioner's Exhibit "3"), these notes are clearly

insufficient to even begin to evaluate whether all the work requested met the Tax Law criteria for capital improvements. The leases, in some of which, according to the controller, the tenant work is described with specificity, are not in the record. The controller testified that some of the labor was for roof repairs and window replacements. These may or may not have been capital improvements depending on the specifics of what was done (see, 20 NYCRR 527.7[b][1] [window replacement]; 20 NYCRR 527.7[b][4] [roof repairs]).

The failure to produce the documents, which petitioner alleges support the controller's general statements concerning the nature of the services performed, is particularly significant given petitioner's failure to produce these records during the audit. The Division has never had the opportunity to review the records on which petitioner bases its claim of nontaxability. While petitioner could have produced these records at the hearing to overcome the presumption in Tax Law § 1132 that all of petitioner's purchases were taxable services, having not done so, petitioner has failed to meet its burden of proving that "any receipt" is not taxable (see, Matter of Giordano v. State Tax Commn., 145 AD2d 726, 535 NYS2d 255; Matter of Sol Wahba v. New York State Tax Commn., supra, 512 NYS2d 542; Matter of On the Rox Liqs. v. State Tax Commn., supra, 507 NYS2d 503; Matter of Sunny Vending Co. v. State Tax Commn., 101 AD2d 666, 475 NYS2d 896; Matter of LaCascade, Inc. v. State Tax Commn., 91 AD2d 784, 458 NYS2d 80; Matter of Reference Lib. Guild, Tax Appeals Tribunal, August 4, 1988).

We next address whether the Division's expansion of the audit to periods prior to the initial three year audit period was proper. We agree with the Administrative Law Judge for the reasons given in his determination. Since petitioner filed no sales tax returns as required by Tax Law § 1133 on the purchases the Division alleges are subject to tax, Tax Law § 1147(b) permits the tax to be assessed at any time (see Matter of WIXT-TV, Inc., Tax Appeals Tribunal, August 2, 1990). Therefore, the entire period during which petitioner was in business was properly open for assessment. Petitioner's attempt at the hearing to discredit the auditor for his decision to expand the audit period, or for failing in petitioner's view to have sufficient reasons for such an expansion is irrelevant to the Division's absolute right to assess tax for any particular period

for which the statute of limitations is open (Tax Law § 1147[b]; Matter of Charles R. Wood Enters. v. State Tax Commn., 67 AD2d 1042, 413 NYS2d 765, 767).

We next address whether the method used by the Division to calculate the assessment for the expanded audit period was proper. The Division used the figures for petitioner's purchases obtained from a review of petitioner's books and records for the period December 1, 1979 to November 30, 1982 to determine a quarterly average assessment which was then applied to the quarters of the audit period for which petitioner was in business but for which no books and records were supplied. Petitioner concedes that the auditor requested the records for these periods but that no records were produced (Tr., p. 108). However, petitioner argues that the Division should have made additional requests for the records, including subpoenaing them if necessary, and that the projection should not be allowed because there has not been an affirmative showing that petitioner specifically refused to provide the books and records. Additionally, petitioner argues that using the figures from the detailed audit period results in an inaccurate assessment. Petitioner claims that it established at the hearing that it had fewer tenants during the expanded audit period than during the period for which the Division actually reviewed books and records, and that, therefore, its purchases during the expanded period must have been less. However, petitioner did not produce any records to show what its purchases actually were during the expanded period.

We cannot agree with petitioner that the Division's estimate methodology was unreasonable. The record is clear that the auditor made requests for documents for the expanded audit period and that the documents were not supplied by petitioner. The auditor then used figures from the books and records of petitioner that were available to him to calculate the assessment. The Division was not required, as petitioner argues, to make further requests or to subpoena petitioner's records before it was entitled to resort to an estimate methodology (Matter of Continental Arms Corp. v. State Tax Commn., 72 NY2d 976, 534 NYS2d 362, 363, revg 130 AD2d 929, 516 NYS2d 338; Matter of Club Marakesh v. Tax Commn. of State of New York, 151 AD2d 908, 542 NYS2d 881, 883, lv denied 74 NY2d 616, 550 NYS2d 276). Although

petitioner continues to claim that its records were and are available, petitioner had the opportunity to submit its records into evidence at the hearing and did not do so. As the Administrative Law Judge noted, it is petitioner's own failure to produce its records that compelled the Division to resort to the estimate methodology used here. Under these circumstances, petitioner has failed in its burden to show that the audit method used was unreasonable (Matter of Meskouris Bros. v. Chu, 139 AD2d 813, 526 NYS2d 679, 681; Matter of Surface Line Operators Fraternal Org. v. Tully, 85 AD2d 858, 446 NYS2d 451, 452; Matter of Kassem and Shukry, Tax Appeals Tribunal, March 28, 1991).

We now address the Division's exception in this matter. The Administrative Law Judge held that petitioner met its burden of proof with respect to the nontaxability of its purchases of secretarial/clerical services. The Division does not request that the Administrative Law Judge's finding be reversed or the assessment for the secretarial/clerical services be upheld. Rather, the Division argues that the language used by the Administrative Law Judge in finding these services not to be taxable is overbroad.

As the Administrative Law Judge held for petitioner with regard to the assessment for secretarial/clerical services and the Division does not request that this finding be reversed or modified, we decline to further address this aspect of the assessment or to express our opinion on the language used by the Administrative Law Judge. As determinations of an Administrative Law Judge have no precedential value (Tax Law § 2010[5]) and the Tribunal has not addressed this aspect of the Administrative Law Judge's determination in this opinion, the language used by the Administrative Law Judge in finding for petitioner has no force or effect for future cases involving interpretation of this section. In addition, this decision of the Tribunal upholding the determination of the Administrative Law Judge has no precedential value with regard to the issue raised by the Division's exception.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioner Airport Industrial Park is denied;

2. The exception of the Division of Taxation is neither granted nor denied;

3. The determination of the Administrative Law Judge is upheld;

4. The petition of Airport Industrial Park, except as granted by the determination of the Administrative Law Judge, is denied in all respects; and

5. The notices of determination issued on June 27, 1983, except as modified by the determination of the Administrative Law Judge, are sustained.

DATED: Troy, New York
April 11, 1991

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Maria T. Jones
Maria T. Jones
Commissioner