

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
	:	
of	:	
	:	
FOLLIN AUTO SALES, INC.	:	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 June 1, 1982	:	
through February 28, 1985.	:	

Petitioner, Follin Auto Sales, Inc., 4741 White Plains Road, Bronx, New York 10470, filed an exception to the determination of the Administrative Law Judge issued on September 17, 1987 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 June 1, 1982 through February 28, 1985 (File Nos. 802582 and 802872). Petitioner appeared by its president, Anthony Santaromita. The Division of Taxation appeared by William Collins, Esq. (Angelo A. Scopellito, Esq., of Counsel).

Neither of the parties requested oral argument on this exception. The petitioner and the Division of Taxation each filed a letter brief.

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

ISSUE

Whether the Division of Taxation, upon audit of the petitioner, properly determined that bank deposits in excess of reported gross sales were additional receipts subject to sales tax.

FINDINGS OF FACT

The petitioner in this case waived its right to a hearing and submitted the matter for determination based on the Division of Taxation's file. We find the facts of this matter as stated in the Administrative Law Judge determination and such facts are incorporated herein by this reference.

To summarize these facts, the Division's sales tax audit of the petitioner determined that petitioner had bank deposits in excess of gross sales and that petitioner was unable to substantiate the source of this excess. The Division initially treated the entire excess, \$276,859, as taxable receipts with a tax due thereon of \$22,704.18. Prior to the hearing, the Division accepted substantiation from the petitioner to reduce the tax to \$17,055.06. At hearing, the petitioner submitted no additional evidence, but submitted the matter for decision based on the Division's file.

OPINION

On exception, the petitioner asserts that the Administrative Law Judge determination is contrary to the facts and applicable law, but does not develop any particular argument to support its position. We find no basis to modify the Administrative Law Judge determination that the Division of Taxation determined petitioner's sales in accordance with section 1138(a) of the Tax Law and that the petitioner failed to sustain its burden to prove, under section 1132(c) of the Tax Law, that the excess receipts were not taxable. The Administrative Law Judge determination is, therefore, in all respects affirmed.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of the petitioner, Follin Auto Sales, Inc., is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. Except to the extent of the Division of Taxation's concessions, as indicated by finding of fact 4 of the Administrative Law Judge determination, the petition of Follin Auto Sales, Inc. is denied and the notices of determination and demand issued on September 20 and December 20, 1985 are sustained.

DATED: Albany, New York
March 03, 1988

/s/ John P. Dugan
President

/s/ Francis R. Koenig
Commissioner