

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition :

of :

CHRISTOPHER P. DEFEO :

DECISION
DTA NO. 815772

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 December 1, 1991 through August 31, 1994. :

Petitioner Christopher P. DeFeo, 250 Continental Drive, New Hyde Park, New York 11040, filed an exception to the determination of the Administrative Law Judge issued on September 24, 1998. Petitioner appeared *pro se*. The Division of Taxation appeared by Terrence M. Boyle, Esq. (Brian J. McCann, Esq., of counsel).

Petitioner did not file a brief in support of his exception. The Division of Taxation filed a brief in opposition. Oral argument was not requested.

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

ISSUES

I. Whether petitioner's tax liability under the Tax Law is limited by the terms of a plea bargain between petitioner and the Attorney General of the State of New York, whereby petitioner pleaded guilty to grand larceny in the second degree and conspiracy in the fourth degree based on collecting and not remitting sales tax on behalf of Ghost Motorcycle Buy-Rite Sales Corp. ("Buy-Rite").

II. Whether petitioner is collaterally estopped from denying that he was a person required to collect sales and use taxes on behalf of Buy-Rite after pleading guilty to grand larceny in the second degree and conspiracy in the fourth degree based on collecting and not remitting sales tax on behalf of Buy-Rite, and, if not so estopped, whether petitioner has proven he was not such a person.

III. Whether petitioner is collaterally estopped from arguing that he should not be held liable for a fraud penalty based on his guilty plea, and, if not so estopped, whether the Division has met its burden of proving fraud.

IV. Whether interest and penalty should be abated based on petitioner's assertion that he was unable to obtain the books and records utilized in the audit of Buy-Rite from the Division of Taxation for the period from 1992 until 1997, despite his alleged numerous requests for such records.

FINDINGS OF FACT

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

On May 28, 1996, the Division of Taxation ("Division") issued a Notice of Determination ("notice"), notice number L-012047795, to petitioner in the amount of \$42,840.91 in tax, \$25,150.27 in interest and \$35,961.95 in penalty, for a total balance due of \$103,953.13 as of that date. The notice covered sales and use taxes for the period December 1, 1991 through August 31, 1994 and was issued to petitioner as a person required to collect sales and use taxes pursuant to Tax Law § 1131(1) and § 1133(a) for Buy-Rite.

During the period at issue Buy-Rite was in the business of motorcycle sales and service. Petitioner described his employment with Buy-Rite as being a truck driver, and his duties as delivering new vehicles and picking up vehicles in need of service.

The audit that was the basis for the notice covered the period March 1, 1984 through August 31, 1994. Two other notices arising out of the same audit were issued to petitioner as a responsible officer or person for Buy-Rite. Notice number L-012204220 was for the period March 1, 1984 through November 30, 1990 and set forth a tax due of \$175,124.84. Notice number L-012204219 was for the period December 1, 1990 through November 30, 1991 and set forth tax due of \$82,094.10. The total tax due for the three notices combined was \$300,059.85, as originally issued. The Division issued three separate notices for the audit period because of different powers of attorney on file for the different time periods.

Petitioner requested a conciliation conference and on January 17, 1997 a conciliation order was issued recomputing the statutory notice to \$14,786.63 in tax due, with interest and penalty to be computed at the applicable rate. The revised consent and the report on tax conferences indicate that for the period March 1, 1992 through August 31, 1994 the tax due was recomputed to \$1,963.75 and the penalties for those periods were canceled based on petitioner's efforts to "rectify filing errors during those periods" (Division's Exhibit J, attachment). For the period December 1, 1991 through February 29, 1992, the Division agreed to one adjustment only, tax was adjusted from \$13,246.95 to \$12,822.88 to reflect that some of petitioner's customers resided in areas charging a lower sales tax rate than the Suffolk County rate upon which the Division's figures were based. There were no adjustments concerning penalty and interest. The \$14,786.63 listed as tax due in the conciliation order consists of \$1,963.75 in tax due for the

period March 1, 1992 through August 31, 1994, plus the \$12,822.88 in tax due for the first quarter of the notice. Payments were made and credited to the notice at issue in the amount of \$2,393.68.

Petitioner filed a petition with the Division of Tax Appeals contesting the amount of \$12,822.88, the remaining disagreed tax for the quarter December 1, 1991 through February 29, 1992. This amount and this quarter are all that are at issue in the present matter, together with the interest and penalties on such amount.

At the conclusion of the hearing in this matter both petitioner and the Division were granted time to submit additional documents. Petitioner submitted a copy of a reward poster for certain stolen motorcycles, which is marked and accepted as petitioner's Exhibit 3; a Consolidated Statement of Tax Liabilities dated January 12, 1998, which is marked and accepted as petitioner's Exhibit 4; and, a satisfaction of judgment dated March 23, 1998, which is marked and accepted as petitioner's Exhibit 5.¹ The Division submitted eight sales tax returns and a vendor registration card, which are marked and accepted as Division's Exhibit Q; and, a transcript of plea proceedings that took place on September 13, 1995 in Nassau County, County Court regarding indictment number 87530, which is marked and accepted as Division's Exhibit R.

The Division's initial investigation in this matter included Buy-Rite, Ghost Motorcycle Sales Corp. and Ghost Cycles, Inc. According to the Division there were four principals involved with these three corporations: Salvatore DeFeo (petitioner's father), Salvatore DeFeo, Jr.

¹The satisfaction of judgment was submitted with petitioner's reply brief and after the time for submission of additional documents had passed. It is accepted, however, as the document is dated in March of 1998 and therefore was not available any sooner and the Division did not object to its introduction.

(petitioner's brother), petitioner and Theodore Griffin. The investigation began with the Division's attempting to establish an appointment with one of the principals. After a year or more of trying to establish contact with these corporations in order to conduct a sales tax examination to no avail, the case was turned over to the Division's Tax Enforcement Division ("TED") as a potential fraud case.

Indictments were brought against all four principals charging them with grand larceny in the second degree and conspiracy in the fourth degree based on their actions in collecting sales tax and then not forwarding such monies to the State for the period December 1, 1987 through February 29, 1992. After initially pleading not guilty, all four defendants determined to change their plea and did so before the Honorable Ira H. Wexner, County Court Judge, Nassau County Court, on September 13, 1995.

November 8, 1995 was set as the date for sentencing. The amount of restitution to be paid to the Division was set at \$188,000.00. A \$50,000.00 payment was made in connection with the sentencing, leaving approximately \$138,000.00 unpaid. Restitution/Reparation Judgment Orders were entered against the four criminal defendants in the amount of \$34,612.19 each. Each of the defendants agreed that they were jointly and severally responsible for the entire amount of the restitution. Petitioner was also sentenced to five years probation. Petitioner was to pay \$575.00 per month for five years commencing on December 8, 1995. A Satisfaction of Judgment entered March 18, 1998, in the office of the County Clerk of Nassau County, indicates that the judgment entered against petitioner in the amount of \$34,612.19 has been paid in full.

By memorandum dated December 5, 1995, Robert L. Shepherd, Deputy Commissioner, TED, informed the Audit Division of the New York State Department of Taxation and Finance,

Division of Taxation (“Audit Division”) of the conclusion of the criminal case and referred the matter to the Audit Division. An audit of Buy-Rite and the other two companies was then conducted by Mr. Michael Fetcho, a Sales Tax Auditor 1 with the Division. This audit culminated in the notice at issue in this matter being issued on May 28, 1996.²

The tax due set forth in the notice was calculated using several different methods. For the last 10 quarters (the period March 1, 1992 to August 31, 1994), the auditor utilized the figures set forth in the books provided by petitioner regarding motorcycle sales and nontaxable sales (a test was conducted to verify the accuracy of the nontaxable sales). There were only two adjustments made to these figures for this 10-quarter period. The first was an adjustment of \$820.47 in use tax based on self-use of demonstration vehicles. The second adjustment was the addition of \$13,450.36 in taxable sales, explained in the audit report as follows:

In addition to the reported book taxable sales, it was computed that an additional \$13,456 in retail sales are being assessed. A third party verification from Cagiva Motorcycles, a supplier, had two vehicles costing \$10,765, which could not be shown to be in the inventory of unsold vehicles nor sold via their record of MV50 documents. The costs were increased based on a markup of 25% which was computed on the gross profit analysis. (Division’s Exhibit E, p.10.)

The Division introduced a document entitled “Complete Schedule SUMMARY OF ADDITIONAL TAX DUE” (Division’s Exhibit G). This is a listing of tax due by sales tax period broken down by the basis of the tax liability asserted (for example, taxable per books, TED, self use of demo’s, etc.). There is an entry of \$13,450.36 for the sales tax period June 1, 1994 through August 31, 1994. The basis of the tax liability asserted for this entry is listed as

²As previously discussed, there were other notices issued as a result of this audit that are not relevant to the current discussion.

“Additional Taxable”. While there is a \$5.64 difference between this entry and the amount set forth in the audit report, it is determined that this is the entry for the motorcycles discussed in the audit report. This determination is based on the closeness of the amounts and a review of the other columns in the Division’s Exhibit G, which leads to the conclusion that there is simply no other column that these motorcycles could have appeared in.

Petitioner’s tax liability for these quarters was resolved at conference, and has, in fact, been paid. These quarters are not at issue in the current proceeding.

For the first quarter of the notice, the period of December 1, 1991 through February 29, 1992, the only quarter remaining at issue, the auditor utilized the information provided by TED to calculate tax due. TED basically collected information from three sources. The initial source was from documents obtained from the vendor’s business by search warrant. Most of these documents were invoices. Based on these documents TED determined that there was \$10,846.76 of sales tax that was collected from customers but not remitted to New York State. Questionnaires were then sent out to alleged customers by TED. The information on petitioner’s customers was obtained from New York State Department of Motor Vehicles (hereinafter “DMV”) records. The second source of information utilized by TED were those questionnaires returned by customers that had documentation as to purchases from petitioner and sales tax paid. Based on these documents TED determined that there was an additional \$1,919.12 of sales tax that was collected from customers but not remitted to New York State. The third source of information utilized by TED were questionnaires returned by customers who provided information based upon memory, but did not have documentation. Based on these questionnaires

TED determined that there was an additional \$57.00 of sales tax that was collected from customers but not remitted to New York State.

In calculating the amount of restitution due in the criminal proceedings, TED only utilized the amount of \$10,846.76 for this quarter — the amount of tax due based only upon the vendor's records. The secondary source documentation, consisting of the questionnaires returned with and without documentation, was not utilized for the purpose of calculating restitution.

The auditor in this case calculated the tax due using all three types of information. The total due as calculated on the notice was \$13,246.95. As a result of the conference the Division adjusted the amount of tax claimed to be due to \$12,822.88. The original amount was incorrect because it was calculated using a rate of tax assuming that all petitioner's customers were located in Nassau County. The rate was adjusted to reflect the actual rates for the localities where petitioner's customers resided.

As discussed above, all four defendants in the criminal proceeding pleaded guilty to grand larceny in the second degree and conspiracy in the fourth degree on September 13, 1995. The record of those proceedings was submitted by the Division. During the course of those proceedings, each of the four defendants was represented by his own counsel. New York State was represented by Assistant Attorney General Victor Genecin.

Judge Wexner questioned each of the defendants regarding his age, educational background and general understanding of the charges. The judge specifically asked each defendant if he had received adequate time to speak with his lawyer and whether he was "satisfied with the way in which your lawyer has represented you" (Division's Exhibit R, p. 8). Petitioner responded in the affirmative to these questions. The judge, through a series of

questions, asked all four defendants if they were aware of their right to a trial, of the people's burden to prove their guilt beyond a reasonable doubt in the event of a trial, that it was not necessary for any of them to testify at a trial, that they were entitled to see, hear and question the witnesses against them and present their own witnesses. When asked if he understood that by changing his plea he gave up all these rights, petitioner again responded in the affirmative. Petitioner, by responding to the judge's question, indicated that he was not threatened or forced in any way to change his plea to guilty.

Judge Wexner then questioned all four defendants individually regarding the alleged crimes and began by stating "I will not accept your pleas unless you are, in fact, guilty" (Division's Exhibit R, p.21). The questioning of petitioner went as follows:

THE COURT: Mr. Christopher DeFeo, let me ask you what occurred as far as you are concerned between December 1st, 1987 and February 29th, 1992 in Nassau County as it relates to moneys that were received from customers for sales tax of sales of motorcycles.

CHRISTOPHER DeFEO: I didn't give it to the state.

THE COURT: You knew that the sales taxes were collected?

CHRISTOPHER DeFEO: Yes.

THE COURT: You knew that they were supposed to be turned over to the state?

CHRISTOPHER DeFEO: Yes.

THE COURT: The business was being operated in Nassau County?

CHRISTOPHER DeFEO: Yes.

THE COURT: And you knew that you were violating the law by not remitting the amount to the State of New York?

CHRISTOPHER DeFEO: Yes.

THE COURT: And you were aware of the fact along with the others, namely, your father and your brother, Salvatore Junior, and Mr. Theodore Griffen --

CHRISTOPHER DeFEO: Yes.

THE COURT: — that the moneys were collected and not remitted?

CHRISTOPHER DeFEO: Yes.

THE COURT: And that it was a violation of the law to participate in the activities that you were doing by collecting the sales tax and not remitting the same?

CHRISTOPHER DeFEO: Yes.

THE COURT: And do you acknowledge that the \$188,000.00 represents an amount that was not paid after being collected?

CHRISTOPHER DeFEO: Yes.

THE COURT: And you are willing to be jointly and severally responsible, together with the others?

CHRISTOPHER DeFEO: Yes.

THE COURT: And do you know if the others that I have just named were aware of the fact that the moneys were collected and not remitted?

CHRISTOPHER DeFEO: Yes. (Division's Exhibit R, pp. 34-36.)

Further on in the proceedings the judge continued his questioning of petitioner as follows:

THE COURT: . . . Incidentally, Mr. Christopher DeFeo, were you an officer of any of the three named corporations?

CHRISTOPHER DeFEO: Yes.

THE COURT: Which one?

CHRISTOPHER DeFEO: Ghost Motorcycle Buy-Rite Sales Corp.

THE COURT: What was your title?

CHRISTOPHER DeFEO: President.

THE COURT: You were not an officer of the other two corporations?

CHRISTOPHER DeFEO: No. (Division's Exhibit R, p. 40.)

During the questioning of Salvatore DeFeo, petitioner's father, Mr. Scaring, the attorney representing Salvatore DeFeo, objected consistently to questions from Assistant Attorney General Genecin concerning his client's role in the corporations. For example:

MR. SCARING: . . . What I don't want to happen here is for Mr. Genecin, who indicated at a bench conference that there is some agenda that the civil division has in store, the civil tax auditors have in store. I don't want Mr. Genecin to use this as a mechanism to prepare a civil case. The purpose of this discussion here is to make sure that the defendant is guilty of the crimes that he is pleading guilty to, which I believe he has clearly stated in his allocution to the Court. This open-ended question by Mr. Genecin, I believe is inappropriate.

MR. GENECEIN: Your Honor, the record should be clear that I do not represent the civil collection functions of the tax department and have no interest in any measures that they may take with respect to this case. My sole concern is with the sufficiency of the plea here, and it should be clear that the entities that were responsible for collecting the sales tax were three corporations that had certificates of authority from the Department of Taxation and Finance.

I want the record to be clear here that each of these defendants had the role of a responsible individual within those corporations and that each of those, that each of the defendants personally was responsible for collecting and also for remitting the taxes and that the defendants plead to conspiring, that is to say, working together to make sure that those taxes were, one, collected from customers, and, two, not remitted to the State of New York (Division's Exhibit R, pp. 24, 25.)

Furthermore, when Assistant Attorney General Genecin asked Salvatore DeFeo whether the other three defendants served as officers or directors of the three corporations at his request or direction, Mr. Scaring again objected on the basis that he thought the question "has to do with the

civil aspect that's coming.” (Division's Exhibit R, p. 29.) Also, while discussing the amount of tax due and the issue of whether certain payments had been properly credited, Mr. Scaring stated “if the civil division comes to us, we definitely have a dispute on that issue.” (Division's Exhibit R, p. 32.)

In contrast to the record of the criminal proceedings, at the hearing in the present matter, petitioner testified that he did not agree with the criminal charges brought against him, but did not have the financial ability to contest such charges. He testified that he would not have pleaded guilty to the charges if he had known that there was a possibility of future assessments being issued by the Division, over and above the amount agreed to as restitution in the criminal matter. Furthermore, he stated he received limited information from his lawyer. After expressing his disagreement with the criminal charges, petitioner admitted that he had pleaded guilty to the charges. When asked by the Division's representative if he knew if the other three defendants had also pleaded guilty, petitioner responded:

I believe so. I have nothing to do with them anymore because I was pretty much like the fall guy that got in trouble for something he didn't do. (Tr., p. 72.)

Petitioner also testified that he had dyslexia and therefore did not fill out the MV-50s, required for purchasers to register their vehicle, and that his father filled these out. He added that he did not have anything to do with the paperwork for Buy-Rite, “all they did was use my signature. I really didn't know what was going on. I just would sign the papers.” (Tr., p. 80.)

More consistent with the record of the criminal proceedings was petitioner's testimony at the hearing that he had the authority to sign checks for Buy-Rite, was listed on the signature cards on file with the bank for Buy-Rite and did actually sign checks for Buy-Rite. When asked

on cross-examination if he signed sales tax returns and checks for payment of sales taxes during the audit period, petitioner answered in the affirmative.

After the conclusion of the hearing the Division introduced copies of sales tax returns for the quarters ending May 31, 1988, August 31, 1988, November 30, 1988, February 28, 1989, May 31, 1989, and November 30, 1989.³ When shown these documents during the course of the hearing petitioner emphatically denied that the signature on the documents was his. Furthermore, he could not remember if he signed the sales tax return for the period in question and only specifically admitted signing the sales tax returns for the period from March 1, 1992 until the conclusion of audit period, August 31, 1994. The sales tax return for the period in question was not introduced by either party.

The Division also introduced a copy of the Vendor Registration Information Card for Buy-Rite listing April of 1984 as the date Buy-Rite began doing business in New York State and identifying petitioner as president of the corporation. This card does not contain or require a signature, but petitioner testified that the hand-printing on the card was not his.

Petitioner stated that he was not aware of any forgeries of his signature on sales tax returns until the hearing, but was aware his name might have been signed by someone else on several checks. He added, "I was a truck driver, and they were just using my signature to have their - - I guess it was their way out, which got me in a lot of trouble." (Tr., p.89.)

When asked on cross examination if he had any documentary evidence in support of his testimony, petitioner responded that he did not have the time to go through the records that had

³These documents, together with another sales tax return that was not submitted, were shown to petitioner at the hearing, but not introduced into evidence at that time.

been returned to him by TED, and that TED had organized the records for their use in the criminal prosecution and he was not able to locate specific documents.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In her determination, the Administrative Law Judge considered petitioner's arguments that the Division is limited in its assertion of tax liability by the amount of the restitution agreed to as part of petitioner's plea agreement in the criminal case; that petitioner would not have pled guilty to criminal charges if he had been aware that the amount of restitution agreed to did not represent the total amount of sales and use taxes due for the period December 1, 1987 through February 29, 1992; and that petitioner was not fully informed by his attorney in the criminal matter. The Administrative Law Judge noted that the only evidence in the record regarding the plea agreement in addition to petitioner's assertions was the transcript of the proceedings wherein petitioner and the other three defendants pled guilty to charges of grand larceny in the second degree and conspiracy in the fourth degree based on their actions in collecting sales tax and then not forwarding such monies to the State for the period December 1, 1987 through February 29, 1992. As part of this plea agreement, a restitution order was entered against petitioner for \$34,612.19 which covered the period at issue in the present proceeding.

The Administrative Law Judge, relying on this Tribunal's decisions in ***Matter of Miras*** (Tax Appeals Tribunal, October 22, 1992), ***Matter of N.T.J. Liquors*** (Tax Appeals Tribunal, May 7, 1992) and ***Matter of Dallacqua*** (Tax Appeals Tribunal, March 2, 1989), concluded that the Division was not restricted as a matter of law from issuing a notice of determination for the total amount of taxes it determined was due, where that amount is greater than an amount agreed to as restitution in a criminal case based on the same facts for the same time period. The

Administrative Law Judge concluded that there was nothing in the record of the plea proceedings indicating that the Division would be limited to seeking recovery only of those amounts agreed to as restitution. Further, she concluded that petitioner had not met his burden of proof to show that the amounts set forth in the notice of determination issued to petitioner were erroneous because of some promise made by the prosecutor that petitioner relied upon to his detriment.

Relying further on the plea proceedings, the Administrative Law Judge concluded that petitioner was estopped from now arguing that he was not a responsible officer of Buy-Rite for the period December 1, 1991 through February 29, 1992. Although the Administrative Law Judge concluded that petitioner was not estopped from challenging the amount of tax due based on petitioner's allegation that two motorcycles were stolen and not sold, the Administrative Law Judge concluded that the amount of tax asserted by the Division for these motorcycles was assessed for the period June 1, 1994 through August 31, 1994. Petitioner had already agreed to and paid the tax due for that period and the Division of Tax Appeals was, therefore, without jurisdiction to review this issue.

The Administrative Law Judge also concluded that petitioner was estopped from contesting the fraud penalty for the period at issue. Although the burden of proving fraud rests with the Division, petitioner pled guilty to charges based on having collected sales tax from customers and failing to remit them to the State, while knowing that such taxes were legally due and owing to the State. Furthermore, petitioner admitted that he conspired with three others to accomplish this. The Administrative Law Judge concluded that there was simply no doubt that petitioner's actions were fraudulent and that petitioner was estopped from arguing that the fraud penalty in this matter was improperly asserted.

The Administrative Law Judge concluded that petitioner had not demonstrated entitlement to an abatement of interest under either Tax Law § 1145(a)(1)(iii), by showing that his failure to pay over tax was due to “reasonable cause and not due to willful neglect,” or under Tax Law former § 3008, by showing errors or delays by Division employees in performing ministerial acts. The Administrative Law Judge noted that although petitioner testified that he continuously requested that his records or copies of his records be returned to him, he offered no documentary evidence that he actually requested such documents and petitioner conceded in his reply brief that such evidence does not exist. Further, petitioner did not make a Freedom of Information Law request for the records after the conclusion of the criminal case nor did petitioner utilize the records that were returned to him during the course of the hearing.

The Administrative Law Judge also concluded that the Division produced evidence that all of petitioner’s restitution payments were applied to a notice of determination issued for the period covered by the plea agreement in the criminal case. However, since that notice was not before the Division of Tax Appeals for review, the Division of Tax Appeals had no jurisdiction over the application of the payments to this notice.

ARGUMENTS ON EXCEPTION

On exception, petitioner argues that the Division should not be able to issue a notice of determination for an amount greater than that which he agreed to as part of the plea bargain in the criminal matter. Petitioner argues that it was his understanding that no additional liability would be assessed outside of the plea agreement. He claims that during the plea proceedings, he was uninformed by his lawyer and was told by his lawyer that he had to enter a guilty plea to the charges. Petitioner also claims that during the period of the assessment, he was only a truck

driver for the business and that his father used his signature to run the business. He argues that he had no involvement with the collection of sales tax during this period and did not know that taxes were not being paid. However, from 1992 until 1994 he oversaw the collection of taxes for the business and ensured that they were paid in a timely fashion.

Petitioner also argues that he should not be estopped from contesting fraud because he was not involved in the running of the business for the period of the assessment. Additionally, interest and penalties should be abated because the Division kept the business records from him from 1992 until 1997. Petitioner argues that this made it impossible for him to determine his tax liability.

In opposition, the Division argues that petitioner's testimony, without further proof, is not sufficient to show that the Division is limited to the amount of the criminal restitution when assessing civil liabilities; that petitioner is estopped from contesting the civil fraud penalty at issue, having pled guilty to grand larceny in the second degree and conspiracy in the fourth degree for collecting and not paying over sales taxes (and in the alternative, the proof of fraud exists); petitioner failed to present any evidence of any errors made by the Division; and, petitioner has not proven that he made his alleged requests for documents or that receiving the documents in March of 1997 prejudiced him in any way, and, in any event, interest cannot be abated.

OPINION

After carefully reviewing the record in this matter, we find that the Administrative Law Judge has fully and correctly addressed each of the issues raised by petitioner herein. Petitioner has presented no basis for modifying the Administrative Law Judge's determination in any

respect. Petitioner's arguments are completely unsupported by the evidence contained in the record and his assertions of lack of knowledge and lack of responsibility are incredible in view of the transcript of plea proceedings in Nassau County Court on September 13, 1995 at which time petitioner pled guilty to grand larceny in the second degree and conspiracy in the fourth degree based on his actions in collecting sales tax and failing to remit such monies to the State for the period December 1, 1987 through February 29, 1992. As a result, we affirm the Administrative Law Judge's determination for the reasons set forth therein.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Christopher P. DeFeo is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of Christopher P. DeFeo is denied; and

4. The Notice of Determination dated May 28, 1996, as modified by the conciliation order,
is sustained.

DATED: Troy, New York
April 22, 1999

/s/Donald C. DeWitt

Donald C. DeWitt
President

/s/Carroll R. Jenkins

Carroll R. Jenkins
Commissioner

/s/Joseph W. Pinto, Jr.

Joseph W. Pinto, Jr.
Commissioner