

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petitions	:	
of	:	
GEORGE, ISMINI AND NICHOLAS SARANTOPOULOS OFFICERS OF TAK DINERS, INC.	:	DETERMINATION
	:	
for Revision of Determinations or for Refunds of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period December 1, 1981 through May 31, 1985.	:	

Petitioners, George, Ismini and Nicholas Sarantopoulos, officers of TAK Diners, Inc., 36 Colfax Avenue, Staten Island, New York 10306, filed petitions for revision of determinations or for refunds of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1981 through May 31, 1985 (File Nos. 803070, 803071 and 803072).

A hearing was held before Thomas C. Sacca, Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on December 12, 1989 at 2:45 P.M. Petitioners appeared by Melvin Schwinger, C.P.A. The Division of Taxation appeared by William F. Collins, Esq. (Gary Palmer, Esq., of counsel).

ISSUES

- I. Whether the Division of Taxation properly determined upon audit that TAK Diners, Inc. owed additional sales tax.
- II. Whether petitioners were responsible for the payment of such taxes pursuant to Tax Law §§ 1131(1) and 1133(a).
- III. Whether a consent executed by an officer of the corporation after petitioner Nicholas Sarantopoulos had resigned from the corporation is valid as to such petitioner.

FINDINGS OF FACT

On December 18, 1985, the Division of Taxation issued notices of determination and demands for payment of sales and use taxes due to petitioners, George, Ismini and Nicholas

Sarantopoulos, for the period December 1, 1981 through May 31, 1985 and assessing each a sales tax liability of \$135,293.21, plus penalty (Tax Law § 1145 [former (a)(1)]) and interest. The notices indicated that petitioners were personally liable as officers of TAK Diners, Inc. ("TAK" or "the corporation") for taxes determined to be due from the corporation. The notices were based upon the results of a field audit of the business operations of TAK as described hereinafter.

On August 9, 1984, the auditor made a visit to the business premises. The premises consisted of a diner with four separate dining areas: a large dining room with a seating capacity of 80; a smaller dining room with a seating capacity of 50; a booth area with a seating capacity of 40; and a counter with a seating capacity of 16. During the audit period and at the time of the audit, the business premises were open 7 days a week, 24 hours a day. The business began operation in February 1982. After being advised to contact TAK's accountant, Mr. Richard M. Prinzi, CPA, in order to conduct the audit, the auditor orally requested that the accountant provide TAK's purchase invoices, cash register tapes, guest checks and Federal income tax returns for the entire period of the business's operation.

The auditor was initially provided with TAK's Federal income tax returns for the period February 1, 1982 through September 30, 1982 and for the fiscal year ended September 30, 1983. In addition, the auditor was provided with daily summary sheets showing the gross sales of the corporation. The auditor was informed by the accountant that the corporation had not maintained any formal ledgers, purchase invoices, cash register tapes or guest checks since it began operations.

In reviewing the records provided, the auditor determined that the filed sales tax returns were consistent with the daily summary sheets. The auditor then compared the total of TAK's gross sales as reported on the Federal income tax returns for the period February 1, 1982 through September 30, 1982 and for the fiscal year ended September 30, 1983 with the total of TAK's gross sales as reported on the sales tax returns for the period December 1, 1981 through August 31, 1983. The comparison revealed that TAK had understated gross sales on the sales

tax returns by \$342,451.00 for the first year and one-half of its business existence.

The auditor requested that TAK save guest checks and purchase invoices for the months of December 1984, January 1985 and February 1985. The reason for this request was to allow the auditor to perform a mark-up audit. After reviewing the guest checks, the auditor determined that a mark-up audit could not be performed as the guest checks were unreadable and the auditor was unable to determine what items were being sold.

On February 13, 1985, Trifon Kolovinas, as the owner of TAK Diners, Inc, executed a consent having the effect of extending the period of limitations for assessment of sales and use taxes for the period December 1, 1981 through November 30, 1982 to December 20, 1985.

On September 5, 1985, the auditor wrote a letter to TAK's accountant requesting that the following documents for the period December 1, 1981 through February 28, 1985 be provided: food, wine, liquor and beer purchases; cash register tapes and guest checks; copies of invoices for all furniture, fixtures, leasehold improvements and equipment purchases; and the names, titles, current addresses and dates of office for all officers of TAK. The auditor also requested that a copy of TAK's Federal income tax return for the fiscal year ended September 30, 1984 be provided. The accountant provided the names of the officers of TAK and the Federal income tax return for the fiscal year ended September 30, 1984. Except for the purchase invoices and guest checks described in Finding of Fact "4", no other books or records for the period under audit were provided.

On August 11, 1983, a flood occurred in the basement of TAK. The business's office as well as its books and records were maintained in the basement. As a result of the flood, TAK's books and records for the period December 1, 1981 through August 11, 1983 were destroyed and therefore unavailable for review on audit. The daily summary sheets and Federal income tax returns reviewed by the auditor were available because they had been filed in the accountant's office. No explanation was provided as to the inability of TAK to produce complete purchase invoices, cash register tapes or guest checks for the period August 12, 1983 through May 31, 1985.

Given the presentation of the limited records described above, the underreporting of gross sales on the sales tax returns and the lack of source documentation which would detail the sales activities and the amount of sales tax collected, the auditor concluded that TAK had inadequate books and records for purposes of conducting a detailed audit and therefore determined to resort to indirect audit methodologies. More specifically, the auditor observed the premises between the hours of 6:00 A.M. and 10:00 P.M. on Tuesday, October 29, 1985 and then reviewed the guest checks issued between the hours of 10:00 P.M. and 6:00 A.M., October 30, 1985.

The auditor observed the business premises between the hours of 6:00 A.M. and 6:00 P.M. at which time he was relieved by another auditor. The second auditor observed the premises until 10:00 P.M. Between the hours of 10:00 P.M. and 6:00 A.M. the next day, TAK saved the guest checks for use in the audit. As a result of the observation and the guest checks, the auditor determined that TAK had taxable sales of \$1,700.00 for the 24-hour period. The auditor then reviewed Tuesday sales on the daily summary sheets for the quarters ended August 31, 1984 and May 31, 1985 and compared them to the weekly sales. As a result of such comparison, it was determined that sales on Tuesday represented 9.1 percent of sales of the week. Using the \$1,700.00 sales figure, the auditor projected weekly sales to be \$18,681.32. The auditor then multiplied the weekly sales of \$18,681.32 by 13 to arrive at quarterly sales of \$242,857.16. The quarterly sales were then compared by the auditor to TAK's average taxable sales reported for the period June 1, 1984 through May 31, 1985, the last year of the audit period. This comparison revealed an error rate of 85.5655% which when applied to taxable sales reported for the audit period resulted in additional taxable sales of \$1,482,413.00 and additional tax due of \$122,299.08.

The auditor reviewed the guest checks for December 29 and 30, 1984 in order to conduct a test of the accuracy of TAK's sales tax collections. An error rate of 2.846 percent was arrived at and applied to the audited tax due of \$264,576.27. This resulted in additional sales tax due of \$7,529.83, which represented the amount of sales tax overcollected during the audit

period.

In reviewing the Federal income tax returns and depreciation schedules, the auditor determined that TAK had made purchases of fixed assets and leasehold improvements totaling \$66,234.03. As no purchase invoices were provided to substantiate that sales tax had been paid on such purchases, the auditor computed tax due in the amount of \$5,464.30.

The total amount of tax determined to be due from TAK for the audit period was \$135,293.21. In turn, the notices of determination described in Finding of Fact "1" were issued to petitioners. The auditor recommended that penalty be assessed based upon the lack of records, the underreporting of gross sales on the sales tax returns and the comparison of reported taxable sales by TAK (\$127,101.13 per quarter) versus taxable sales determined upon audit (\$225,928.67 per quarter).

At the hearing, petitioners submitted an invoice which indicated that sales tax had been paid on the purchases of a food caddy for \$750.00 and a microwave oven for \$1,595.00. The Division of Taxation conceded that the fixed asset purchases subject to tax be reduced by the cost of these two purchases. In addition, documentation submitted at hearing established that TAK offered dinner specials on each night of the week during the years 1984 and 1985.

TAK was incorporated in November 1981 with 100 shares of common stock outstanding. The shares of its stock were distributed as follows: Trifon Kolovinas, as treasurer, owned 50 shares; Nicholas Sarantopoulos, as secretary, owned 25 shares; George Sarantopoulos, as vice-president, owned 15 shares; and Ismini Sarantopoulos, as president, owned 10 shares. George and Ismini Sarantopoulos are the parents of Nicholas Sarantopoulos. The corporation was formed for the purpose of owning and operating the business premises in issue. On December 22, 1981, TAK purchased the diner from Vega Capital Corporation for cash of approximately \$35,000.00 plus the assumption of certain indebtedness owed to Vega Capital Corporation by a previous owner on whom Vega had foreclosed. The cash proceeds were provided by Trifon Kolovinas. The purchase agreement, dated December 22, 1981, was signed by Ismini Sarantopoulos, as president, and Nicholas Sarantopoulos, as secretary. The

diner opened for business in February 1982. Almost immediately, disagreements arose between the owners.

During the period December 1981 through August 6, 1982, Trifon Kolovinas had the authority to sign corporate tax returns, to hire and fire employees, to sign corporate checks and to manage the financial affairs of the corporation. In general, due to Mr. Kolovinas' lack of knowledge of the restaurant business and Nicholas Sarantopoulos' previous experience, the management of the business and financial affairs of the corporation were handled by Nicholas Sarantopoulos. During this period of time, Nicholas Sarantopoulos signed the Certificate of Sales Tax Registration Form, signed the sales tax returns for the quarters ended February 28, 1982 and May 31, 1982, had check-signing authority for the corporation's bank accounts, signed the check for the sales tax due for the quarter ended February 28, 1982, worked with the accountant in preparing the sales tax returns, hired employees, managed the business operation, purchased supplies, operated the cash register and received a salary as manager of the diner.

The continued failure of the diner to be profitable increased the tensions between the owners. As a result of the constant acrimony, Nicholas Sarantopoulos resigned as an officer and director of TAK on August 7, 1982. On September 1, 1982, Trifon Kolovinas purchased Nicholas Sarantopoulos' 25 shares of TAK stock.

During the period August 7, 1982 through April 10, 1983, Trifon Kolovinas continued to have the authorities outlined in Finding of Fact "14". Due to the resignation of Nicholas Sarantopoulos as an officer and director and Trifon Kolovinas' purchase of his shares of stock, Mr. Kolovinas exercised exclusive authority over the management of the business and its financial affairs. He signed the sales tax returns for the quarters ended August 31, 1982, November 30, 1983 and February 28, 1983. In addition, he signed, on December 13, 1982, as president, an Application for 3-Month Extension for Filing a Franchise Tax Report and, on January 28, 1983, as president, the New York State and City of New York Employer's Return of Tax Withheld, Form IT-2101. During this period of time, Mr. Kolovinas had sole control over the books and checking accounts of the corporation, the hiring and firing of employees and the

operation of the cash register. In addition, he assisted in the preparation of the tax returns and decided which creditors to pay. Nicholas Sarantopoulos continued to receive a salary as the manager of TAK, but he had no decision-making authority with regard to the financial affairs or operations of the corporation. Ismini Sarantopoulos signed, on January 8, 1983, as president, the Reconciliation of Tax Withheld for the year 1982, Form IT-2103, at the direction of Mr. Kolovinas. On April 11, 1983, Trifon Kolovinas and Nicholas Sarantopoulos entered into an agreement which provided that Mr. Kolovinas sell his 75 shares of stock in TAK to Nicholas Sarantopoulos for \$115,000.00 and resign as an officer and director of TAK. In addition, the agreement provided that Mr. Kolovinas had the option to repurchase the shares of stock on or before September 15, 1983. On April 11, 1983, Nicholas Sarantopoulos again became an officer, director and shareholder of TAK.

During the period April 11, 1983 through September 14, 1983, Trifon Kolovinas had minimal contact with the business premises. He had no responsibility or authority with regard to TAK's management or its financial affairs. Nicholas Sarantopoulos had and exercised full managerial and financial control over the affairs of the corporation. During this period, he signed the sales tax return for the quarter ended August 31, 1983, the New York State and City of New York Employer's Returns of Tax Withheld for the months of January, February and August 1983, and the New York State Corporation Franchise Tax Report for the period February 1, 1982 through September 30, 1982. Nicholas Sarantopoulos directed his mother, Ismini Sarantopoulos, to sign the withholding tax return for the month of March 1983 and the sales tax return for the quarter ended May 31, 1983. In an effort to stop the closing of the diner and to satisfy various tax warrants filed against TAK, Nicholas Sarantopoulos entered into payment agreements on behalf of the corporation with the Tax Compliance Division of the Department of Taxation and Finance. On September 15, 1983, Trifon Kolovinas exercised his option and repurchased the 75 shares of stock sold to Nicholas Sarantopoulos. Nicholas Sarantopoulos resigned as an officer and director of TAK and had no further involvement in the operation of the diner during the remaining portion of the audit period. Mr. Kolovinas again

became an officer, director and shareholder of TAK.

During the period September 15, 1983 through May 31, 1985, Mr. Kolovinas had and exercised the authority to sign corporate tax returns, to hire and fire employees, to sign corporate checks and to manage the financial affairs of the corporation. It was during this period of time, on February 13, 1985, that he signed the consent extending the period of limitations described in Finding of Fact "5".

During the years at issue, Ismini and George Sarantopoulos had minimal duties and responsibilities with regard to the operation of the corporation. They had no authority to hire or fire employees or to negotiate contracts. Ismini Sarantopoulos signed tax returns only at the request and direction of Mr. Kolovinas or her son, but did not participate in their preparation. George Sarantopoulos made local purchases of supplies when requested to do so by his son. They never signed checks or other corporate documents. They did not have the authority to direct the operation of the business or to decide which creditors to pay, and their knowledge of the financial affairs of the corporation generally came from their son.

SUMMARY OF PETITIONERS' POSITION

Petitioners assert that the results of the one-day observation test were inaccurate because the Division of Taxation failed to take into account the daily specials and senior citizen discounts which were in use in 1984 and 1985 but not in the earlier years. According to petitioners, these specials and discounts would increase sales in the later years when the observation was conducted. Petitioners also assert that the Division failed to take into account that in 1982 this was a new business with lower sales than in 1985. In addition, petitioners claim that on Tuesdays, the day of the observation test, TAK had a T-bone steak special which would greatly increase sales for that day.

According to petitioners, since automobiles cannot be registered without the payment of sales tax, these should be removed from the fixed asset portion of the assessment.

Finally, petitioner Nicholas Sarantopoulos asserts that the consent extending the period of limitations for assessment of sales and use taxes cannot bind him as he had resigned from TAK

prior to the date of execution of the consent.

CONCLUSIONS OF LAW

A. Tax Law §§ 1135 and 1142.5 provide that a taxpayer is under a duty to maintain complete, adequate and accurate records of its sales and to make the same available for audit upon request. Tax Law § 1138(a)(1) further provides that where adequate records are not maintained or made available, the Division of Taxation is entitled to resort to indirect methodologies, including external indices, in conducting audits and determining the accuracy of a taxpayer's returns as filed.

B. Petitioners do not challenge the Division's right to resort to an indirect audit method in this case. It is undisputed that the corporation's sales records were inadequate, given the lack of cash register tapes, guest checks, purchase invoices and the underreporting revealed on the sales tax returns, and thus the use of an indirect audit method was appropriate (Matter of Licata v. Chu, 64 NY2d 873, 487 NYS2d 552; Matter of Vebol Edibles, Inc. d/b/a Hickory House, Tax Appeals Tribunal, January 12, 1989). The Division is not required to rely upon a taxpayer's non-source documentation and determine the amount of tax due based upon general ledgers or other secondary documents which cannot be verified (Matter of Club Marakesh, Inc. v. Tax Commission of the State of New York, 151 AD2d 908, 542 NYS2d 881; Matter of Meyer v. State Tax Commn., 61 AD2d 223, 402 NYS2d 74 lv denied 44 NY2d 645, 402 NYS2d 1025; Matter of Ronnie's Suburban Inn, Tax Appeals Tribunal, May 11, 1989). Thus, the only remaining issue with regard to the audit is whether the particular methods employed, or the results thereof, were irrational or erroneous.

C. Petitioners have the burden to establish by clear and convincing evidence that the audit method was erroneous (Matter of Surface Line Operators Fraternal Organization, Inc. v. Tully, 85 AD2d 858, 446 NYS2d 451). At the hearing, petitioners established that dinner specials occurred on each night of the week. However, petitioners did not establish a "typical" sales volume day and its effect on the audit results, the difference in sales between the earlier years and the later years of the audit, an appropriate allowance for the dinner specials and senior

discounts, or the registration of any motor vehicles and the payment of sales tax thereon.

Petitioners' allegations, without more, are insufficient to warrant an adjustment to the audit findings (Matter of Mera Delicatessen, Inc., Tax Appeals Tribunal, November 2, 1989; Matter of Vebol Edibles, Inc. d/b/a Hickory House, *supra*; Matter of Alletor Corporation, Tax Appeals Tribunal, November 17, 1988).

The fact that a longer test period might have given a better picture of the corporation's business and thus its tax liability does not satisfy petitioners' burden to establish by clear and convincing evidence that the method of audit or the amount of the tax assessed was erroneous (Matter of Club Marakesh, Inc. v. State Tax Commission, 151 AD2d 908). Where a taxpayer's own failure to maintain adequate, accurate and complete books and records requires resort to indirect audit techniques, exactness is not required of the Division of Taxation in arriving at its determination, and the consequences of recordkeeping failures in this regard weigh heavily against the taxpayer (Matter of Meskouris Brothers, Inc. v. Chu, 139 AD2d 813, 526 NYS2d 679).

Accordingly, the audit procedures described herein and the results thereof are sustained for the period under audit (see, Matter of Meskouris Brothers v. Chu, *supra*; Matter of Gaetano Vendra d/b/a Pete's Pizzeria, Tax Appeals Tribunal, February 9, 1989; Matter of Vebol Edibles, Inc. d/b/a Hickory House, *supra*).

D. Section 1147(b) of the Tax Law, with regard to the time limitation for assessing a tax due, provides:

"However, except in the case of a willfully false or fraudulent return with intent to evade the tax no assessment of additional tax shall be made after the expiration of more than three years from the date of the filing of a return...."

Section 1147(c) of the Tax Law, concerning extensions of the statute of limitation for assessment of additional tax due, provides:

"Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended the amount of such additional tax due may be determined at any time within such extended period."

E. The consent executed by Trifon Kolovinas on February 13, 1985 on behalf of the

corporation cannot bind petitioner Nicholas Sarantopoulos. At the time the waiver of the statute of limitations was executed, petitioner was not in any way affiliated with the corporation, having resigned and sold all his stock on September 15, 1983. As the sales tax returns for the quarters ending February 28, 1982, May 31, 1982 and August 31, 1982 were filed more than three years prior to the date of the issuance of the notice of determination, the assessment for these three quarters is untimely. Therefore, such quarters are cancelled as to petitioner Nicholas Sarantopoulos (Matter of Oakley M. Gentry, III, State Tax Commission, September 16, 1983; Matter of Ronald Rossi, State Tax Commission, September 16, 1983).

F. In general, Tax Law § 1133(a) imposes upon any person required to collect tax imposed by Article 28 personal liability for the tax imposed, collected, or required to be collected. Tax Law § 1131(1) defines persons required to collect tax to include, among others, corporate officers and employees who are under a duty to act for such corporation in complying with the requirements of Article 28.

G. The holding of corporate office does not per se impose tax liability upon the office holder (Blodnick v. State Tax Commission, 124 AD2d 437, 507 NYS2d 536). The determination that an individual is a person required to collect tax depends upon the particular facts of each case (Stacy v. State Tax Commission, 82 Misc 2d 181, 368 NYS2d 448; Matter of Autex Corporation, Tax Appeals Tribunal, November 23, 1988). The relevant factors to consider when determining whether a person has such a duty to act for the corporation include, inter alia, authorization to sign the corporate tax return, responsibility for management or maintenance of the corporate books, authorization to hire and fire employees and derivation of substantial income from the corporation or stock ownership (see, 20 NYCRR 526.11[b][2]; Matter of Cohen v. State Tax Commission, 128 AD2d 1022, 513 NYS2d 564; Matter of Blodnick v. State Tax Commission, supra; Matter of William D. Barton, Tax Appeals Tribunal, December 28, 1989).

Other indicia include whether the person was generally permitted to manage the corporation (20 NYCRR 526.11[b][2]), the individual's simultaneous status as an officer,

director or shareholder (Cohen v. State Tax Commn., supra), the authorization to write checks on behalf of the corporation (Chevlowe v. Koerner, 95 Misc 2d 388, 407 NYS2d 427), and the individual's knowledge of and control over the financial affairs of the corporation (Vogel v. State Tax Commn., 98 Misc 2d 222, 413 NYS2d 862; see, Matter of William D. Barton, supra; Matter of Autex Corporation, supra).

H. Applying these criteria to petitioner Nicholas Sarantopoulos' case leads to the conclusion that he was a person required to collect tax on behalf of TAK for a portion of the period at issue.

On August 7, 1982, petitioner Nicholas Sarantopoulos resigned as an officer and director of TAK. On September 1, 1982, Trifon Kolovinas purchased Nicholas Sarantopoulos' 25 shares of TAK stock. Although petitioner Nicholas Sarantopoulos continued to receive a salary as manager of TAK, he had no decision-making authority with regard to the financial affairs or operations of the corporation. During this period of time, Mr. Kolovinas signed the sales tax returns, had exclusive control over the books and checking accounts of the corporation, hired and fired the employees and operated the cash register. In addition, Trifon Kolovinas assisted in the preparation of the tax returns and decided which creditors to pay. These circumstances continued until April 10, 1983. Therefore, during the period September 1, 1982 through April 10, 1983, petitioner Nicholas Sarantopoulos was not a person required to collect tax on behalf of TAK.

I. On April 11, 1983, Trifon Kolovinas sold all his stock in TAK to petitioner Nicholas Sarantopoulos and resigned as an officer and director. Petitioner Nicholas Sarantopoulos became secretary-treasurer of the corporation and owned 75% of the common stock. He was directly involved in the day-to-day operations and financial affairs of TAK. He signed the corporation's tax returns, including sales tax returns, had responsibility for the financial affairs of the corporation, hired and fired employees, managed corporate personnel and operations, assisted in the preparation of the tax returns and had control over the books and records of TAK. On September 15, 1983, petitioner Nicholas Sarantopoulos sold to Trifon Kolovinas

75% of the common stock of TAK and resigned as an officer and director of the corporation. Under these circumstances, petitioner was a person required to collect and pay over sales taxes on behalf of TAK for the period April 11, 1983 through September 15, 1983 (Vogel v. State Tax Commission, *supra*; Matter of Autex Corporation, *supra*).

J. On September 15, 1983, as previously discussed, petitioner Nicholas Sarantopoulos sold all his stock in TAK and resigned as an officer and director. He had no authority or responsibilities with regard to TAK's operations or financial affairs. In fact, he had no further involvement with the diner during the remaining portion of the audit period. Therefore, petitioner Nicholas Sarantopoulos was not a person required to collect tax on behalf of TAK for the period September 16, 1983 through May 31, 1985.

K. Petitioners George and Ismini Sarantopoulos were not persons required to collect tax on behalf of the corporation. Although petitioners apparently had the authority to sign tax returns, they did so only at the direction and request of Mr. Kolovinas or their son. They were not responsible for maintaining the corporate books or for the management of the corporation. They did not have the authority to hire or fire employees or have any responsibility or involvement with the financial affairs of the corporation. In addition, they received no benefits from the corporation's profits during the period at issue. Lastly, it is significant that petitioners were not engaged in the preparation and filing of the corporation's sales and use tax returns and did not draft checks on behalf of the corporation. Therefore, petitioners George and Ismini Sarantopoulos were not persons required to collect and pay over sales taxes on behalf of the corporation for the period December 1, 1981 through May 31, 1985.

L. The petition of Nicholas Sarantopoulos, officer of TAK Diners, Inc., is granted to the extent indicated in Finding of Fact "12" and Conclusions of Law "E", "H" and "J"; the Notice of Determination and Demand for Payment of Sales and Use Taxes Due is to be modified accordingly. The petition is, in all other respects, denied.

M. The petitions of George Sarantopoulos and Ismini Sarantopoulos, officers of TAK Diners, Inc., are granted and the notices of determination and demands for payment of sales and

use taxes due, dated December 18, 1985, are cancelled.

DATED: Troy, New York

ADMINISTRATIVE LAW JUDGE