

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>MARGARET LAVINE D/B/A</b>	:	
<b>MARGARET'S DOG GROOMING</b>	:	DETERMINATION
	:	DTA NO. 817892
for Revision of Determinations or for Refund of Sales and	:	
Use Taxes under Articles 28 and 29 of the Tax Law for	:	
the Period March 1, 1992 to May 31, 1997.	:	

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Petitioner, Margaret LaVine d/b/a Margaret's Dog Grooming, 6702 B 20<sup>th</sup> Avenue, Brooklyn, New York 11204, filed a petition for revision of determinations or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1992 to May 31, 1997.

A small claims hearing was held before Gary R. Palmer, Presiding Officer, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on May 28, 2002 at 1:15 P.M., with all briefs to be submitted by June 15, 2002, which date began the three-month period for the issuance of this determination. Petitioner appeared by John F. Raspante, CPA. The Division of Taxation appeared by Barbara G. Billet, Esq. (William Fowler).

***ISSUE***

Whether the Division of Taxation, upon receiving petitioner's late filed sales and use tax returns for the previous 21 quarters, was permitted to issue notices and demands for a period earlier than that falling within the previous three years.

***FINDINGS OF FACT***

1. On September 18, 1997, petitioner filed 21 New York State and local quarterly sales and use tax returns for the 21 consecutive sales tax quarters beginning March 1, 1992 and ending May 31, 1997. At the time of the filing of these 21 returns, each of the returns was then past due.

2. The sales tax returns were filed in the name of Margaret’s Dog Grooming with a business address of 6702 20<sup>th</sup> Avenue, Brooklyn, New York 11204. The returns identified the nature of the business as “dog grooming.” Although none of the returns were signed by the vendor, each return had petitioner’s social security number inserted in the space marked “Sales Tax Vendor identification number.” The source of petitioner’s reported gross sales and taxable sales, which sums are identical on each sales tax return, was her schedule C income from her Federal income tax returns.

3. On February 17, 1998 the Division issued to petitioner six notices and demands for payment of tax due. Each of these six notices sets forth the amount of the sales tax reported due on one of the filed sales tax returns or the amount of sales tax computed from the gross and taxable sales reported on these returns. The notice number, tax period, amounts of tax, interest and penalty with the then current balance due as stated on each of the six notices are as follows:

Notice #	Qtr. Ending	Tax	Interest	Penalty	Total Due
L014680653	5/31/92	\$276.54	\$269.02	\$105.00	\$650.56
L014680654	5/31/93	\$391.96	\$293.87	\$123.23	\$809.06
L014680655	5/31/94	\$407.47	\$224.89	\$128.22	\$760.58
L014680656	5/31/95	\$357.31	\$134.51	\$107.13	\$598.95
L014680657	5/31/96	\$406.97	\$ 89.87	\$117.83	\$614.67
L014680658	5/31/97	\$320.35	\$ 26.52	\$100.00	\$446.87

4. Petitioner requested and was granted a conciliation conference with respect to the six notices and demands by the Bureau of Conciliation and Mediation Services, which conference was held on April 6, 2000. By conciliation order dated June 2, 2000, the conferee canceled the penalties, but otherwise sustained the six notices as issued.

5. On June 23, 2000 petitioner filed her petition for a hearing with the Division of Tax Appeals in protest of the conciliation order. In her petition petitioner stated:

Taxpayer filed all returns once they were informed by NYS of the taxability of this service. Taxpayer feels period of audit should be only three years.

### ***CONCLUSIONS OF LAW***

A. Petitioner avers that the Division is prohibited from issuing a statutory notice assessing sales and use tax for any period earlier than three years preceding the September 18, 1997 filing date of petitioner's 21 sales and use tax returns.

B. Tax Law § 1147(b) reads, in part, as follows:

no assessment of additional tax shall be made after the expiration of more than 3 years from the date of the filing of a return . . . .

It follows that if the Division intended to assess additional tax, then it would have three years from September 18, 1997 to assess as to all 21 quarters. But the Division did not claim that petitioner owed any additional tax, only that the amount of tax petitioner reported to be due in 6 of her 21 late filed returns should now be paid. A notice and demand is a demand for payment of a tax that neither party disputes is due. Petitioner's tax liability herein was self assessed by petitioner when, on September 18, 1997, she reported her taxable sales for each quarter at issue.

C. The petition of Margaret LaVine is denied and, except as modified at conference, the notices and demands issued February 17, 1998 are sustained.

DATED: Troy, New York  
August 15, 2002

/s/ Gary R. Palmer  
PRESIDING OFFICER