STATE OF NEW YORK

DIVISION OF TAX APPEALS

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| In the Matter of the Petitions | : | |
| of | : | |
| **WHITE STONE ENTERPRISES, INC.** | : | DETERMINATION<br>DTA NOS. 820533 |
| 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, 1998 through August 31, 2001. | : | AND 820534 |

Petitioner, White Stone Enterprises, Inc., 980 Montauk Highway, Shirley, New York 11967, filed petitions 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, 1998 through August 31, 2001.

A hearing was held before Timothy J. Alston, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on March 9, 2006 at 12:00 PM., with all briefs to be submitted by November 6, 2006, which date commenced the six-month period for the issuance of this determination. Petitioner appeared by Carl S. Levine, Esq., and Diane J. Moffet, Esq. The Division of Taxation appeared by Daniel Smirlock, Esq. (Robert A. Maslyn, Esq., of counsel).

## *ISSUE*

Whether, under the facts and circumstances herein, petitioner's applications for refund of sales tax paid should be granted.

## *FINDINGS OF FACT*

1. Petitioner, White Stone Enterprises, Inc. ("White Stone"), owned and operated a gas station located at 980 Montauk Highway, Shirley, New York. The record indicates that

petitioner also operated two other gas stations during the period at issue, located at 1741 Montauk Highway, Bellport, New York, and 2825 Montauk Highway, Brookhaven, New York, although a review of fuel purchase invoices in the record indicates that the vast majority of petitioner's fuel purchases were delivered to the 980 Montauk Highway location.

2. Kemal Akkaya was, at all times relevant herein, White Stone's president and sole shareholder.

3. Following an audit of petitioner's sales, the Division of Taxation ("Division") created a Notice of Determination, dated April 21, 2003, addressed to petitioner, White Stone Enterprises, Inc., 980 Montauk Highway, Shirley, New York 11967-2118. The notice, which bore assessment identification number L-022242159-8, asserted additional sales and use taxes due for the period December 1, 1998 through August 31, 2001 in the amount of $181,994.32, plus interest of $37,505.23, for a total balance due of $219,499.55. The parties dispute whether this notice was properly issued.

4. Petitioner did not protest the Notice of Determination within 90 days of the date listed thereon.

5. The Division subsequently issued a Notice and Demand, dated August 14, 2003, also addressed to petitioner, which demanded full payment of assessment L-022242159-8 by September 4, 2003. With the accrual of additional interest, the Notice and Demand asserted a total balance due of $224,393.86.

6. On or about October 7, 2003 the Division docketed a warrant against petitioner in Suffolk County, New York, in respect of assessment L-022242159-8.

7. On December 10, 2003, employees of the Division's compliance unit seized petitioner's gas station at 980 Montauk Highway, Shirley, New York. At that time, the Division

took $1,329.00 in cash from petitioner's main cash register and $25.00 from petitioner's lottery cash register in partial payment of assessment L-022242159-8. On the same day, petitioner paid $862.42 for the cost of putting padlocks on the gas station at the Division's direction.

8. On December 11, 2003, petitioner paid the Division $150,000.00 in respect of assessment L-022242159-8. The payment was made in order to reopen the gas station. The bank check by which payment was made indicates that such payment was made "under protest."

9. On or about January 27, 2004, petitioner filed an application for refund of "all sums paid to date to the Tax Department regarding sales taxes on motor fuel and diesel motor fuel and cigarette taxes covering the tax period ending February 28, 1999 through the present, in excess of sums which it is obligated by the Tax Law to have paid." The January 27, 2004 refund application sought, at the least, refund of the amounts paid to the Division by petitioner on December 10 and 11, 2003, plus interest.

10. In its refund application, petitioner denied receipt of the Notice of Determination dated April 21, 2003. Petitioner did not dispute receipt of the Notice and Demand dated August 14, 2003, and a copy of such Notice and Demand was attached to the refund application.

11. On or about April 15, 2004, employees of the Division's compliance unit again seized petitioner's gas station at 980 Montauk Highway, Shirley, New York. This time petitioner paid the Division $75,000.00 on assessment L-022242159-8 in order to have the station reopened.

12. On or about May 7, 2004, petitioner filed an application for refund of all overpayments of sales taxes on motor fuel, diesel motor fuel and cigarette taxes made during the period January 27, 2004 through the date of the application. The May 7, 2004 application sought, at the least, refund of the $75,000.00 paid by petitioner to the Division on or about April 15, 2004, plus interest.

13. By letters dated July 8, 2004 and October 21, 2004, respectively, the Division, by Peter J. Spitzer, Excise Tax Auditor II, denied in full petitioner's refund applications dated January 27, 2004 and May 7, 2004. The denial letters assert that the April 21, 2003 Notice of Determination was properly issued to petitioner; that the Division's records did not disclose that the notice was returned to the Division; and that therefore the notice became an assessment legally subject to collection on July 21, 2003. The letters each summarized the basis for the denials as follows:

> Based on our review of this matter, since there is absolutely nothing to cause us to believe that the moneys collected from your client [petitioner] were collected in anything other than a correct and legal manner, the application is denied in its entirety.

14. Petitioner subsequently filed requests for conciliation conference with the Division's Bureau of Conciliation and Mediation Services in protest of the refund denials. Following the discontinuance of its requests for conference, petitioner filed the petitions at issue, by which petitioner protests the denial of its refund claims. In its petitions, petitioner contests the Division's claim that it properly sent a Notice of Determination to petitioner on April 21, 2003 and therefore contests the Division's position that the Notice of Determination became legally subject to collection on July 21, 2003.

15. At hearing, the Division submitted an affidavit of Excise Tax Auditor II Peter J. Spitzer, dated March 6, 2006, based on Mr. Spitzer's personal knowledge and "also upon information and belief, the source thereof being a review of the files maintained by the Division of Taxation."

16. Mr. Spitzer's affidavit asserts that the April 21, 2003 Notice of Determination was sent by the Division to petitioner by certified mail at the address listed thereon, that it was not

returned to the Division, and that petitioner failed to protest the notice within 90 days of its issuance.

17. Attached to the Spitzer affidavit is a copy of a document identified in the affidavit as the "redacted Certified Mail Log" which assertedly shows the certified mailing to petitioner. The affidavit provides no additional information regarding the certified mail log.

18. The "redacted Certified Mail Log" attached to the Spitzer affidavit is a 12-page document captioned "New York State Department of Taxation and Finance Assessments Receivable Certified Record for Non-Presort Mail." In the upper left corner of page one, "4/21" has been handwritten. Petitioner's name and address appear on page nine of the document next to a "certified" number and a "reference" number L 022242159, which is similar to the assessment number herein (***see***, Finding of Fact "3"). All other "reference" numbers and taxpayer names and addresses appear to have been redacted. Each page of the document contains what appears to be a U.S. Postal Service stamp. Not all of the stamps are legible, although those which are legible are dated April 21, 2003. The stamp on page nine of the document is illegible. The document contains 124 entries. On page 12 the number "124" has been handwritten, and the page also contains what appear to be initials. Other pages of the document also contain the same apparent initials, although such initials may have been redacted on a few of the pages.

19. The Division began the audit which resulted in the April 21, 2003 Notice of Determination by sending a letter to petitioner dated September 6, 2001. This letter requested that petitioner make all of its books and records pertaining to its sales tax liability for the audit period, identified in the letter as December 1, 1998 through August 31, 2001, available for review.

20. On October 18, 2001, the Division's auditor met with petitioner's accountant, Mr. Saranto Calamas, CPA, who provided the Division with petitioner's fuel purchase invoices and workpapers used by Mr. Calamas to prepare petitioner's sales tax returns.

21. Petitioner did not provide the Division with any sales journals, sales invoices, pump prices, or any other records of its sales.

22. Given the absence of any records of sales, the Division concluded that petitioner's books and records were insufficient for the purpose of verifying its taxable sales and therefore decided to estimate petitioner's sales tax liability for the audit period. As a starting point, the Division determined petitioner's audited gallons of gasoline and diesel fuel purchased during the audit period by totaling the purchase invoices provided by petitioner's representative. The purchase invoices reviewed in detail by the auditor indicated 8,798,981 total gallons of gasoline purchased during the audit period. Petitioner's sales tax returns for the same period indicated 6,780,003 gallons of gasoline purchased.

23. Next, the Division determined petitioner's audited selling prices for gasoline during the audit period. Except for the last two quarters of the audit period (i.e., March 1, 2001 through August 31, 2001), the Division determined audited selling prices by using an "OPIS" report. As described by the auditor, an OPIS report is an information service provided by Wright Express Credit Card Company ("Wright") concerning retail gasoline sales at stations within a particular postal zip code using Wright credit cards. OPIS reports in the record list a daily price for regular gasoline for each listed station. The reports do not list a price for every day, but do list prices for several days within each sales tax period.

24. The Division commonly uses OPIS reports in performing audits of gas stations.

25. Using the daily prices listed on the OPIS reports, the Division determined an audited quarterly retail price for regular gas sold by petitioner. In her affidavit, the Division's auditor refers to such audited quarterly retail selling price as an "average" price. It is unclear from the record, however, how the Division calculated such "average" prices. To determine the audited selling price for mid-grade and premium gas, the Division relied on information in petitioner's representative's sales tax workpapers concerning markups and therefore added ten cents per gallon for the audited selling price for mid-grade and an additional five cents per gallon for the audited selling price of premium. The Division did not specify or identify particular workpapers upon which it relied to make this determination with respect to the selling prices of mid-grade and premium. It is noted that only five of the sales tax periods at issue had purchases of mid-grade gasoline. For those quarters that did not have mid-grade purchases, the Division increased the audited selling price for regular by five cents to reach the audited selling price of premium.

26. Next, the Division multiplied the audited quarterly selling price for regular, mid-grade and premium gas by audited quarterly gallons purchased of regular, mid-grade and premium, respectively, to reach quarterly audited gross sales of gasoline. From that amount the Division calculated petitioner's quarterly sales tax liability by subtracting New York State excise tax and giving credit for petitioner's prepaid sales tax to reach additional tax due per quarter. In this manner, the Division determined additional tax due of $151,253.33 on petitioner's sales of gasoline for the period December 1, 1998 through February 28, 2001.

27. For the audited selling prices for diesel fuel, the Division used audited quarterly selling prices for regular gasoline determined as noted above, multiplied such audited selling prices by quarterly purchases of diesel fuel as indicated by petitioner's purchase invoices to

reach audited gross sales of diesel fuel and ultimately determined additional tax due of $6,136.26 on petitioner's sales of diesel fuel for the period December 1, 1998 through February 28, 2001.

28. As noted, the Division did not have OPIS reports for the last two quarters of the audit period, i.e., March 1, 2001 through August 31, 2001. For those periods, the Division determined audited selling prices for gas by using what was described by the auditor as New York City consumer reports. According to the auditor, such reports provide information concerning gasoline selling prices in New York City.

29. Such New York City consumer reports are commonly used by the Division in audits of gas stations.

30. The documents described as the New York City consumer reports which were used by the Division in the audit of petitioner were received in evidence at the hearing as part of the Division's audit file. There are six such reports in the audit file, one for each month of the March 2001 through August 2001 period. The reports indicate, on page one, that they are monthly gasoline price surveys of the New York City Department of Consumer Affairs. Each of the monthly reports lists, among other information, a "Citywide Average Price" for regular and premium unleaded gas.

31. The Division determined petitioner's audited selling price for regular gasoline for the quarters ended May 31, 2001 and August 31, 2001 by taking the average of the "Citywide Average Price" for regular gas as indicated on the consumer reports for the three months comprising each such quarter. The Division then calculated the audited selling price for premium for the these quarters, and the price for mid-grade for the quarter ended August 31, 2001, in the same manner as described above in Finding of Fact "25." For diesel fuel, the

Division used the audited selling price for regular gasoline.[1] The Division then multiplied such audited selling prices by petitioner's purchases of regular, mid-grade, premium and diesel fuel for these quarters to reach audited gross sales and ultimately determined additional tax due of $26,698.45 on petitioner's sales of gasoline and $1,362.85 on petitioner's sales of diesel fuel for the period September 1, 1999 through November 30, 1999.

32. In total, the Division determined $177,951.78 in additional tax due on petitioner's sales of gasoline and $7,499.10 in additional tax due on petitioner's sales of diesel fuel during the audit period.[2]

33. Petitioner also sold cigarettes during the period at issue and during the audit failed to produce any records of purchases or sales of cigarettes. Although, as a result of this failure, the Division disallowed, on audit, all credit claimed by petitioner on its sales tax returns in respect of prepaid sales tax on cigarettes, such disallowed credit was not included in the total tax asserted due in the subject Notice of Determination.

34. During the course of the audit petitioner executed a consent dated December 27, 2002 extending the period of limitations for assessment of sales tax due for the period December 1, 1998 through May 31, 2000 until June 20, 2003.

35. Petitioner sought to submit additional evidence, identified as Appendix 1, with its post-hearing memorandum of law. Such documentation has not been reviewed by the administrative law judge and is not received in evidence in this matter.

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[1] The affidavit of the auditor states that prices for premium and diesel were provided by the consumer reports. A review of such reports does not support this contention.

[2] The relatively small discrepancy between the total tax due of $185,450.88 as indicated in this Finding of Fact (as derived from the auditor's workpapers) and the total tax due of $181,994.32 as asserted in the subject Notice of Determination is unexplained in the record.

36. Following petitioner's submission of its post-hearing brief, the Division requested permission to submit additional evidence. Such request was denied.

37. Petitioner requested that the administrative law judge take official notice of the record and findings of fact in ***Matter of Akkaya*** (Administrative Law Judge Determination, February 26, 2007 [DTA No. 820293]). Such request is declined. The facts for which petitioner seeks notice involve an audit of a corporation also owned by Kemal Akkaya. Such other audit, while similar in method to the audit described herein, was separate and distinct from the audit in the instant matter.

## *SUMMARY OF THE PARTIES' POSITIONS*

38. Petitioner contends that the Division had the burden of proving proper mailing of the April 21, 2003 Notice of Determination to petitioner and that the Division failed to meet that burden. Accordingly, petitioner contends, the subject assessment did not become fixed and final and was not subject to collection, and consequently, petitioner is entitled to a refund.

39. The Division contends that the issuance of the April 21, 2003 Notice of Determination was proper and that therefore the tax became fixed and final. The Division asserts that it has met its burden of going forward to establish proper mailing of the Notice of Determination. The Division further asserts that even if petitioner did not receive the notice, the proper remedy under such circumstances is a hearing on the merits. The Division further asserts that not all of the requirements imposed on the Division to prove mailing where the Division contests the timeliness of a petition should apply where, as here, the timeliness of the petition is not at issue. More specifically, the Division asserts that since petitioner is asserting the right to a refund, petitioner must prove that the subject notice was not properly mailed. The Division contends that petitioner has failed to make such a showing.

40. The Division further asserts that a tax is not erroneously, illegally or unconstitutionally paid if at the time the taxes were paid they were due and owing. In this case, the Division asserts, the assessment had become fixed and final at the time of payment, thus the tax at issue was due and owing. Hence no refund is allowable.

41. As to the underlying audit which gave rise to the refund claim, petitioner contends that the refund should be granted because the audit was conducted using erroneous and irrational audit methodologies.

42. With respect to the audit, the Division asserts that its method was reasonable and that petitioner has failed to show any error.

## *CONCLUSIONS OF LAW*

A. Regarding the issues raised by the parties with respect to the proper issuance of the April 21, 2003 Notice of Determination, the first point which must be addressed is the matter of the burden of proof on the question of mailing.

Where the timeliness of a petition or request for a conciliation conference is at issue, it is well established that the Division has the burden to show that it properly mailed the subject statutory notice and when such notice was mailed (***see***, ***e.g.***, ***Matter of Novar TV & Air Conditioner Sales & Service, Inc***., Tax Appeals Tribunal, May 23, 1991). The rationale for the imposition of this burden on the Division is that evidence of mailing is within its knowledge and, implicitly, not within the knowledge of the taxpayer (***see***, ***Matter of Malpica***, Tax Appeals Tribunal, July 19, 1990). The same rationale applies in the instant matter. Although the timeliness of petitioner's protests of the refund claim denials, via requests for conciliation conference and, subsequently, petitions, is not at issue, petitioner explicitly raised the issue of the proper issuance of the subject Notice of Determination in both its refund applications and its

petitions.[3] As noted above, since evidence of proper issuance of the notice is within the Division's knowledge, the Division properly has the burden of proof on this issue.

The Division contends that since petitioner is seeking a refund or is raising a defense based on nonreceipt, petitioner has the burden to show nonreceipt of the notice, following which the Division would have the burden of going forward to show proper issuance. In support of this proposition, the Division cites cases where petitioners raised a statute of limitations defense to a Notice of Determination (***Matter of Pittman***, Tax Appeals Tribunal, February 20, 1992; ***Matter of Jencon***, Tax Appeals Tribunal, December 20, 1990). This contention is rejected. Where a taxpayer raises a statute of limitations defense to an assessment, the taxpayer has the burden of making a prima facie showing of when the limitations period commenced, when it expired and the mailing or receipt of a statutory notice after the running of the period. Where the taxpayer meets this burden, the Division then has the burden of going forward to show that the statutory bar does not apply (***see***, ***e.g.***, ***Matter of Pittman***, ***supra***). Since evidence as to when a limitations period commenced (such as the date of filing a return) and evidence as to the date of receipt of a statutory notice is ordinarily within the knowledge of the taxpayer, it is appropriate that the taxpayer bear the burden of establishing a prima facie case in order to avail itself of the statute of limitations defense. Here, however, the question presented is whether the statutory notice was properly issued. As discussed, such evidence is not within the knowledge of the taxpayer and the burden of proving proper mailing rests with the Division.

[3] Since the refund claims were filed within two years of the dates of payment on December 10 and 11, 2003, and April 15, 2004, such claims were timely filed (***see***, Tax Law § 1139[c]).

B. Having concluded that the Division had the burden of proving proper mailing of the April 21, 2003 Notice of Determination, it must be determined whether the Division has met its burden.

The Division may meet this burden by evidence of its standard mailing procedure, corroborated by direct testimony or documentary evidence of mailing (***see***, ***Matter of Accardo***, Tax Appeals Tribunal, August 12, 1993). The mailing evidence required is two-fold: First, there must be proof of a standard procedure used by the Division for the issuance of statutory notices by one with knowledge of the relevant procedures; and second, there must be proof that the standard procedure was followed in this particular instance (***see***, ***Matter of Katz***, Tax Appeals Tribunal, November 14, 1991; ***Matter of Novar TV & Air Conditioner Sales & Serv.***, ***supra***). The Division must prove both the fact and date of mailing of the notice at issue (***see***, ***Matter of Katz***, ***supra***).

Upon review of the record it is clear that the Division has failed to meet its burden to prove the fact and date of mailing of the April 21, 2003 Notice of Determination. There is no evidence in the record regarding the Division's standard mailing procedures; indeed, there is no evidence in the record from anyone familiar with such procedures. It is noted that the Division does not assert that Mr. Spitzer was such a person, and indeed, the evidence does not suggest that Mr. Spitzer was such a person. Additionally, the "redacted Certified Mailing Log" attached to Mr. Spitzer's affidavit is insufficient to prove mailing. This document has not been authenticated, identified or explained in any way by anyone familiar with the Division's mailing procedures and is thus of little probative value. Clearly, it cannot be concluded that this document is a properly completed certified mail record (***see***, ***Matter of Montesanto***, Tax Appeals Tribunal, March 31, 1994). The Division's failure to authenticate and explain the

document is particularly significant given the apparent defects therein (***see***, Finding of Fact "18" [illegibility of postmarks]).

C. The Division's failure to prove the fact and date of mailing compels the conclusion that the subject Notice of Determination was improperly issued and therefore cannot serve as the basis for a valid assessment (***see***, ***Matter of Malpica, supra***; ***Matter of Taylor***, Tax Appeals Tribunal, October 9, 1997; ***Matter of Snyder***, Tax Appeals Tribunal, December 11, 1997). Furthermore, if the April 21, 2003 Notice of Determination was not a valid assessment, petitioner's liability was not fixed and final, and was therefore not subject to collection (***see***, Tax Law §1138[a][1]). Accordingly, the amounts paid by petitioner on the purported assessment were erroneously collected and must be refunded.

D. Generally, a determination of exact tax liability is a condition precedent for obtaining a tax refund (***see***, ***Matter of Saltzman v. State Tax Commn***., 101 AD2d 910, 475 NYS2d 610; ***Matter of Raemart Drugs v. Wetzler***, 157 AD2d 22, 555 NYS2d 458). In this case, given the absence of any records of sales during the period at issue, it is clear that petitioner has not established its exact tax liability for the period at issue. This general rule should not apply, however, where, as here, the refund claim seeks recovery of amounts paid pursuant to an invalid assessment. Petitioner should not have to prove that it does not owe taxes which were not properly assessed against it.

E. The Division asserts that the proper remedy for any failure to prove mailing is a hearing on the merits of the assessment. This contention is rejected.

In cases where the timeliness of a petition or request for conciliation conference is at issue, a hearing on the merits of the protest is the proper remedy where the fact of mailing is established, but where the Division has failed to prove the date of mailing of a statutory notice

(***see***, ***Matter of Novar TV & Air Conditioner Sales & Serv.***, ***supra***). In the instant matter, as noted previously, the Division has failed to prove both the fact and date of mailing. Under such circumstances, again in cases where the timeliness of a protest is at issue, the Tax Appeals Tribunal has dismissed the petition for lack of jurisdiction and cancelled the statutory notice (***see***, ***Matter of Malpica***, ***supra***; ***Matter of Taylor***, ***supra***). Granting the refund in the instant matter is effectively the same result as that reached by the Tribunal in ***Malpica*** and ***Taylor***.

Additionally, a consideration of the consequences if the Division had proven proper mailing also lends support to the granting of the refund in the instant matter. Pursuant to Tax Law § 1139(c) petitioner would be entitled to a hearing on the merits of the refund claim even if the Division had proved mailing of the statutory notice.[4] Hence, if this determination simply proceeded to a consideration of the underlying merits of the refund claim under the present

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[4] The Division took the position that the notice was properly issued; that petitioner failed to timely protest within 90 days; and that, accordingly, the tax became fixed and final and no refund may be granted. This position is unsupported by the relevant statute. Tax Law § 1139 (as amended by L 1996 ch 267), provides in relevant part as follows:

> (c) Claim for credit or refund of an overpayment of sales tax shall be filed by the taxpayer within three years from the time the return was filed or two years from the time the tax was paid, whichever of such periods expires the later . . . . *No refund or credit shall be made of a tax, interest or penalty paid after a determination by the commissioner made pursuant to section eleven hundred thirty-eight unless it be found that such determination was erroneous, illegal or unconstitutional or otherwise improper, by the division of tax appeals pursuant to article forty of this chapter . . . in which event a refund or credit shall be made* of the tax, interest or penalty found to have been overpaid. (Emphasis added.)

The statute thus expressly provides for the consideration of a refund claim by the Division of Tax Appeals following a determination by the Division pursuant to Tax Law § 1138, i.e., a Notice of Determination, and if such determination is found to be erroneous, then the refund "shall be made." Additionally, the most recent amendment to Tax Law § 1139(c) (***see***, Laws 1996, ch 267) omitted the following sentence from former section 1139(c):

> A person shall not be entitled to a refund or credit under this section of a tax, interest or penalty which had been determined to be due pursuant to the provisions of section eleven hundred thirty-eight where all opportunities for administrative and judicial review as provided in article forty of this chapter have been exhausted with respect to such determination.

The effect of this omission is to allow refunds even where a taxpayer's administrative remedies have been exhausted, such as where a taxpayer fails to file a protest within 90 days of the proper issuance of a Notice of Determination. Hence, even if the Division had established that the subject Notice of Determination was properly mailed, petitioner's failure to timely protest the notice would not preclude the granting of a refund and this determination could properly consider the merits of petitioner's refund claim.

circumstances, there would be no consequences to the Division's failure to establish the existence of a valid assessment.

F. Petitioner's January 27, 2004 refund application also sought recovery of the cost of padlocking the gas station at the Division's direction (***see***, Finding of Fact "7"). Such costs, which are neither taxes, penalties nor interest, are not properly refundable under Tax Law § 1139. This portion of the refund claim is therefore denied.

G. Except to the extent indicated in Conclusion of Law "F," the petition of White Stone Enterprises, Inc. is granted and the Division of Taxation is directed to refund to petitioner amounts paid in respect of assessment L-022242159-8, plus such interest as may be lawfully due.

DATED: Troy, New York
May 3, 2007

/s/ Timothy J. Alston
ADMINISTRATIVE LAW JUDGE