STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
SUFFOLK CENTER CORP.	:	DETERMINATION DTA NO. 822414
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 September 1, 2005 through May 31, 2007.	:	

Petitioner, Suffolk Center Corp., filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 2005 through May 31, 2007.

A hearing was held before Joseph W. Pinto, Jr., Administrative Law Judge, at the offices of the Division of Tax Appeals, One Penn Plaza, New York, New York, on May 11, 2010 at 10:30 A.M., with all briefs to be submitted by September 2, 2010, which date began the six-month period for the issuance of this determination. By letter to the parties, dated February 1, 2011, the Administrative Law Judge extended the time for issuance of this determination for three months pursuant to Tax Law § 2010(3). Petitioner appeared by Paul Kalker, Esq. The Division of Taxation appeared by Daniel Smirlock, Esq. (Lori P. Antolick, Esq., of counsel).

ISSUES

I. Whether the assignment of a lease by 2101 Diner Corp. d/b/a/ Suffolk Diner to petitioner constituted a bulk sale under Tax Law § 1141(c), subjecting petitioner to liability for the payment of sales and use taxes due from the seller.

II. Whether the Division of Taxation's use of the Risk Management Association's annual statement studies to determine a fair market value of the diner was reasonable under the circumstances presented.

FINDINGS OF FACT

1. On March 2, 2006, 2101 Diner Corp. entered into a lease agreement with 3A Realty LLC for the rental of the property located at 2101 Middle Country Road in Centereach, New York, which was utilized as a diner.[1] An audit of 2101 Diner Corp. for the period September 1, 2005 through May 31, 2007 resulted in the issuance of a Notice of Determination for additional sales and use taxes due of $245,095.31. The notice was upheld by the Tax Appeals Tribunal in ***Matter of 2101 Diner Corp.*** (October 21, 2010). It is this liability the Division of Taxation (Division) asserts is properly due and owing from petitioner herein, Suffolk Center Corp. (Suffolk).

2. In February 2007, 2101 Diner Corp. transferred and assigned its lease of the premises at 2101 Middle Country Road in Centereach, New York, to Suffolk. Pursuant to the Transfer of Lease Agreement, dated January 13, 2007, the lease included the rental and use of the diner, business fixtures and equipment, which were stated to be owned by the landlord, 3A Realty LLC. Although a listing of the fixtures and equipment was said to be attached to the agreement, it was not attached to the document in evidence. The agreement recited that petitioner would execute a promissory note for $15,000.00 and deliver the same to 2101 Diner Corp.

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[1]It is noted that the same premises were utilized as a diner for many years and had been audited several times. Two corporations operated diners at the address, Cronos Enterprises and Parnasos, Inc. The latter corporation was audited for the period March 1, 2004 through November 30, 2005, which immediately preceded the audit of 2101 Diner Corp., which produced the liability at issue herein. Mr. George Rekkas was an officer in Cronos and also in 2101 Diner Corp. and an employee of Suffolk Center Corp.

3. The Division of Taxation's Bulk Sales Unit received a communication from the auditor performing the sales and use tax audit of 2101 Diner Corp., indicating that there may have been a bulk sale between 2101 Diner Corp. and petitioner, since he was told on a site visit to the diner that the business had been purchased in March 2007. The Bulk Sales Unit had no information of any sale and, therefore, sent a letter to petitioner, dated May 25, 2007, requesting information on the sale and a completed bulk sale notification form. No response to this request was received and a second request for information was sent on June 25, 2007. Likewise, there was no response.

4. On July 9, 2007, Ms. Phyllis Jacobson, an auditor in the Suffolk District Office, informed the Bulk Sales Unit that she was going to subpoena the lease agreement from the landlord to help in the bulk sale investigation.

5. On July 13, 2007, the attorney for petitioner at that time, Mr. William Yanaros, contacted the Bulk Sales Unit and denied that a bulk sale had occurred, stating that there had only been an assignment of a lease. Once again, the Division requested a copy of the lease agreement.

6. On July 31, 2007, the Division of Taxation issued a Notice of Claim to Purchaser to petitioner, requesting that the entire purchase price be escrowed in order to satisfy any sales tax liabilities assessed against the seller.

7. After the Bulk Sales Unit informed Mr. Yanaros in a telephone conversation on August 1, 2007 that the assignment of lease was considered the transfer of a business asset qualifying as a bulk sale, Mr. Yanaros submitted a Notification of Sale, Transfer, or Assignment in Bulk on August 13, 2007. The notification indicated a sale of the business assets on March 26, 2007 for the consideration of $15,000.00. The only asset transferred was stated to be the lease, which was listed as intangible property. The notification listed no tangible assets that

were transferred. Since the notification was not filed ten days prior to the sale date, it was not timely filed.

8. The Bulk Sales Unit requested a copy of the lease again on August 14, 2007, but only received a copy of the Transfer of Lease Agreement. With no further information forthcoming, the Division issued a Notice of Determination to petitioner, dated November 5, 2007, for the period September 1, 2005 through May 31, 2007, asserting additional sales and use taxes due in the sum of $245,095.31. The notice explained that petitioner was liable as a bulk sale purchaser for taxes determined to be due from 2101 Diner Corp. in accordance with Tax Law § 1141(c) and § 1138(a)(3).

9. The Bulk Sales Unit was able to obtain an Application for Liquidator's Permit filed by 2101 Diner Corp. with the State Liquor Authority that stated it was selling its business and wished to dispose of its stock of alcoholic beverages. The form was signed by the presidents of 2101 Diner Corp. and petitioner on February 13, 2007. A supplemental form filed with the State Liquor Authority on August 14, 2007 listed the inventory that was transferred. No value for the liquor stock was listed on the form.

10. Although it is not certain when the Division received a copy of the lease and from whom, the auditor did not see the lease agreement until the Bureau of Conciliation and Mediation Services conference in April 2008. The lease agreement was executed by 3A Realty LLC and 2101 Diner Corp. on or about March 2, 2006. There were two modifications made to the agreement, which were initialed by the parties on an undisclosed date: the first was an addition to the description of the leased property in section 1 that added the "fixtures and equipment set forth in Schedule 'D'," and the second was a deletion of a paragraph in section 8 that eliminated the

requirement for the tenant to place a two-month rental fee with the landlord. Schedule "D" was an undated, handwritten list of fixtures and equipment.

11. On its U.S. Income Tax Return, form 1120S, filed for tax year 2005, 2101 Diner Corp. reported that it was incorporated on January 21, 2005 and had been doing business as Suffolk Diner at 2101 Middle Country Road, Centereach, New York, since September 2005.

12. The landlord, 3A Realty LLC, initially filed with the New York State Department of State as a domestic limited liability company on January 9, 2006, listing its address as 2101 Middle Country Road, Centereach, New York, the same address as the diner and 2101 Diner Corp. Thus, 3A Realty LLC was not in existence at the time 2101 Diner Corp. began operating the diner in September 2005.

13. In conjunction with the Bulk Sales Unit, the auditor undertook an analysis to determine the fair market value of the business assets of 2101 Diner Corp. in order to establish a purchase price from which a limit on petitioner's liability for unpaid taxes owed by 2101 Diner Corp. could be determined.

14. Utilizing sales figures from his audit of 2101 Diner Corp. and information from the 2007-2008 Annual Statement Studies - Financial Ratio Benchmarks published by the Risk Management Association (RMA), the auditor attempted to discern a value of the business that was sold by 2101 Diner Corp. to petitioner on or about March 26, 2007. RMA is a not-for-profit, member-driven professional association whose sole purpose is to advance the use of sound risk principles in the financial services industry.

15. The auditor chose to use the RMA financial ratio benchmarks because they were derived from financial statements filed with RMA for credit purposes by restaurants similar to

the diner, lending to their credibility. Further, he knew it was a tool frequently used by the Bulk Sales Unit to determine asset value when none was provided.

16. From the audit of 2101 Diner Corp., the auditor knew that audited taxable sales had been determined to be $4,662,222.46 for the audit period, September 1, 2005 through May 31, 2007. From this the auditor was able to calculate monthly sales and then annual sales of $2,664,127.12.

17. By looking at various ratios that would utilize the information the auditor was able to determine from information at hand, he tried to determine if the consideration paid by petitioner was representative of the fair market value of the business. Since he had determined the sales figures from his audit of 2101 Diner Corp., he utilized the sales to total assets ratio from the RMA study, .5, and divided it into audited taxable sales. The result was a fair market value for the business of $5,328,254.23. The RMA ratio used was derived from comparative historical data submitted to RMA between April 1, 2003 and March 31, 2004 and represented a median and "most reliable" ratio by RMA.

18. The auditor sought to narrow his analysis and looked at current data sorted by assets for businesses having between $0 and $500,000.00 in assets, since he had very little information on the assets owned by petitioner. The median sales to assets ratio listed by RMA for a business similar to petitioner, a full service restaurant, was 3.2. Dividing sales by this ratio resulted in a fair market value for the business of $832,539.72. Therefore, based on the RMA sales to total assets ratios, the auditor determined that the fair market value of the business was between $832,539.72 and $5,328,254.23.

19. To support his estimate of the fair market value, the auditor utilized the inventory values he had acquired in the audit of 2101 Diner Corp., which he believed were very reliable

values and not likely to have been understated or overstated, since there was no incentive to do so. Inventory values from the federal income tax returns were averaged and resulted in average inventory of $6,910.00. Using the inventory to total assets percentage reported in the RMA for businesses having assets between $0 and $500,000.00, or 2.4%, and dividing average inventory of $6,910.00 by this percentage, he determined the fair market value of the business assets to be $287,916.67.

20. Using the average inventory again, the auditor applied a comparative historical data percentage from the RMA study for assets to inventory of 1%, which resulted in a fair market value of total assets of $691,000.00. The auditor noted that both values determined using the average inventory figure from the federal tax returns yielded fair market values for the business assets that were in excess of the liability determined to be due from petitioner as a bulk sale purchaser. He concluded that the liability asserted by the Division of Taxation, $245,095.31, was not in excess of the value of the business assets he had determined and that petitioner was responsible for the entire amount of the deficiency asserted.

21. The Bulk Sales Unit routinely uses a Risk Management Association - Financial Ratio Benchmark computation worksheet to estimate the fair market value of business assets when the Division of Taxation has not been provided a contract agreed to by both the buyer and seller. In her affidavit sworn to May 10, 2010, Susan Lyons, a sales tax technician III in the Bulk Sales Unit, independently calculated the estimated value of Suffolk Center Corp.'s business assets in the manner described in Finding of Fact 15 above, resulting in a value of $832,539.69.

CONCLUSIONS OF LAW

A. Tax Law § 1141(c) requires the purchaser in a bulk sale transaction to give notice of such sale to the Division of Taxation (Division) at least ten days before taking possession of or

making payment for the business assets. Compliance with this provision affords the purchaser protection against becoming liable for the seller's unpaid sales tax liabilities. That is, upon the timely filing of a notification of bulk sale, the Division is obligated to inform the purchaser of the existence of a possible claim for sales and use taxes owing by the seller (20 NYCRR 537.6[a][3]). Once this notice of claim is provided to the purchaser, it is then advised of the existence of such claim of taxes due from the seller and of its personal liability for such taxes to the extent of the greater of the fair market value of the assets transferred or the consideration paid (***see*** 20 NYCRR 537.0[c][2]; 537.4[a][1];[c]). Thus, a purchaser may protect itself by placing the consideration to be paid for the transfer in escrow, pending resolution of the Division's claim, so as to be available in the event a liability is determined and upheld. In contrast, if the purchaser fails to file a proper and timely notice of bulk sale, it is exposed to personal liability for the sales and use taxes due from the seller (***Matter of BMW Pizza, Inc. v. Urbach***, 235 AD2d 146, 666 NYS2d 216 [1997]).

B. The term "bulk sale" is defined at 20 NYCRR 537.1(a) to mean:

> any sale, transfer or assignment in bulk of any part or the whole of business assets, other than in the ordinary course of business, by a person required to collect tax and pay the same over to the Department of Taxation and Finance.

C. There is no question that a bulk sale occurred between 2101 Diner Corp. and petitioner on or about March 26, 2007. Petitioner conceded that 2101 Diner Corp. assigned a lease to it, and an independent investigation revealed that liquor stock and other inventory had been transferred as well. The assignment of the lease alone, an intangible asset with substantial value, constituted a bulk sale. (***Matter of Acres Storage Company, Inc. v. Chu***, 120 AD2d 854, 501 NYS2d 966 [1986], ***lv dismissed*** 68 NY2d 807 [1986] [where court found that, for purposes of a bulk sale, business assets included an item of value owned whether tangible or intangible];

see also Matter of Allied Stores Corp. v. State Tax Commn., 115 AD2d 207, 495 NYS2d 291 [1985].) Here, petitioner was the bulk sale purchaser of a going concern that the Division of Taxation determined had generated annual sales of $2,664,127.12, yet petitioner claims to have purchased the establishment for a $15,000.00 promissory note and assuming the lease on the diner's premises for approximately four years.

There is also no question that petitioner did not timely notify the Division of Taxation of the sale, only filing a notification after being instructed to do so. The notification was dated August 10, 2007, almost five months after the sale. By failing to properly and timely notify the Division, petitioner became liable for the payment of any sales and use taxes determined to be owed to the state by 2101 Diner Corp. to the extent of the greater of the purchase price or fair market value of the business assets sold, transferred or assigned to the purchaser.

D. Petitioner contends that it should only be liable for the stated purchase price of the business on its notification form, i.e. $15,000.00, arguing that it merely took an assignment of the lease for the premises and all the fixtures, furnishings, equipment and inventory.[2] The Division contends that the business was much more valuable than the value of the lease assignment, pointing to the location of the diner, the sales it generated, its value as a successful, going concern and the fact that there was more transferred than the assignment of the lease. Thus, the Division urges that the $15,000.00 consideration for the lease assignment should be disregarded and a more reasonable fair market value for the business assets be used as the limit on petitioner's liability for 2101 Diner Corp.'s taxes owed to the state.

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[2]The record did not disclose how or why 2101 Diner Corp., which began operating the Suffolk Diner in September 2005, signed a lease with 3A Realty LLC on March 2, 2006 for the same premises, including all the fixtures, equipment and inventory, with no evidence that 2101 Diner Corp. had ever transferred any of its assets.

It is concluded herein that the value petitioner ascribed to the sale of the business is indefensible as a fair market value for the business assets actually transferred. Petitioner conceded that the diner generated in excess of 1.2 million dollars in sales in 2006 when operated by 2101 Diner Corp. and then 1.6 million dollars in sales in 2007 when operated primarily by petitioner at the very same location. These sales figures were those disclosed by petitioner and 2101 Diner Corp. on their tax returns. The Division had determined on audit that the annual sales were actually $2,664,127.12. It is beyond belief that a going concern generating such a sales volume would be sold at arm's length for $15,000.00 and a lease with a little more than four years remaining on the term.

The diner maintained an average inventory of about $6,910.00, as determined by the Division from tax returns. Although the schedule attached to the lease mentions inventory as part of the leased premises, there was no listing of any inventory items or a value assigned to it. Inventory is fluid and changes constantly and may reflect a very different composition at various times of year. It also contained valuable liquor stock. Yet, petitioner indicated no transfer of any inventory or a value for same, contrary to the evidence in the record.

The joint application for a liquidator's permit filed with the State Liquor Authority states that the permittee, 2101 Diner Corp., was required to *sell* the entire stock of alcoholic beverages and, after approval, submit an inventory of said stock. The application was not approved and the liquor stock was not sold until August 29, 2007, when 2101 Diner Corp. submitted to the State Liquor Authority a list of inventory transferred. Thus, the undisclosed inventory and liquor stock were tangible personal property transferred as part of the sale of the business and never accounted for by petitioner, and specifically omitted from its notification of bulk sale.

Petitioner also did not account for any goodwill transferred as part of the bulk sale. This is preposterous in light of the history of the diner operating at the same location for several years, generating substantial sales in a busy location. Goodwill "is an intangible asset that attaches to a business as a result of such favorable factors as location, product superiority, reputation, and managerial skill" (Fess & Niswonger, Accounting Principles, Study Guide, at 263 [13th ed 1981]). Yet, petitioner maintains that it paid nothing for any assets, tangible or intangible, other than the assignment of lease.

When confronted with the undisclosed inventory, the $15,000.00 promissory note, the assumption of lease, the value of a business generating sales in excess of one million dollars annually and the acquisition of a successful going concern operating in an established, advantageous location, the Division was compelled to determine a more realistic value of the business assets at the time of transfer.

E. In order to confirm the value of the business assets transferred, the Division utilized an RMA study that derived its financial ratio benchmarks from financial statements of companies that had been filed with RMA for credit purposes. The financials included those from restaurants similar to petitioner's diner making them particularly credible. (***See Matter of 33 Virginia Place, Inc.***, Tax Appeals Tribunal, December 23, 2009 [where petitioner's expert witness underscored the credibility of the RMA Study, indicating that the financial information provided in the RMA report is based on a credit application, which is usually backed up by audit and financial statements of the business, and usually an external CPA firm has input into the financial information].) In fact, the Tax Appeals Tribunal has confirmed use of the RMA ratios in determining the value of a business. (***See Matter of Clifton Liquors***, Tax Appeals Tribunal, June 18, 2009.)

Like the expert in ***33 Virginia Place, Inc.***, the auditor herein chose the RMA study for its reliable sources of information, industry specific ratios and discreet ranges for different sizes of businesses. His goal was to determine, within a reasonable confidence range, the value of petitioner's business assets by applying certain RMA ratios to the financial information he was able to collect through the Division's audit investigation and tax returns of the prior owner. By dividing audited sales by a historical sales to total assets ratio he determined a total asset figure of $5.3 million. He then narrowed his analysis by using a median ratio for similar restaurant businesses with asset values under $500,000.00 and determined petitioner's total assets to be $832,539.72.

To verify the accuracy of these estimates, the auditor applied inventory to total assets ratios, chiefly due to his reliable inventory figures taken from the federal tax returns of 2101 Diner Corp. The result when the ratio for businesses under $500,000.00 was divided into the average inventory figure of $6,910.00 was a total asset figure of $287,916.67. A second ratio, which utilized historical data, was used and resulted in estimated total assets of $691,000.00.

Further support for use of the RMA study may be drawn from its routine use by the Bulk Sales Unit to estimate the fair market value of business assets where the Division of Taxation has not been provided with a contract executed by the buyer and seller and an asset value must be determined to calculate the bulk sales tax. Using the standard worksheet utilized by the Bulk Sales Unit, Susan Lyons, a sales tax technician III in the Bulk Sales Unit, independently calculated the value of Suffolk's business assets to be $832,539.69, which coincides with the auditor's computation using a median sales to total assets ratio for similar restaurant businesses with asset values under $500,000.00.

Since the auditor's most conservative estimate of the value of total assets was in excess of the tax asserted by the Division of Taxation in this matter, $245,095.31, and his methodology considered sound and reasonable, petitioner is liable for all of the taxes asserted. (Tax Law § 1141[c].)

F. The methodology utilized by the Division of Taxation to value the business assets transferred in the bulk sale identified the external index, the RMA study, and its role in estimating the reasonable value of the assets transferred pursuant to the bulk sale. (***Matter of Fashana***, Tax Appeals Tribunal, September 21, 1989.) The burden rests with petitioner to show by clear and convincing evidence that the methodology was unreasonable or that the amount assessed was erroneous (***Matter of Meskouris Bros. v. Chu***, 139 AD2d 813, 526 NYS2d 679 [1988]; ***Matter of Surface Line Operators Fraternal Org. v. Tully***, 85 AD2d 858, 446 NYS2d 451 [1981].)

Although petitioner reluctantly conceded that a bulk sale occurred based on the assignment of the lease, it has not conceded that the notification of bulk sale incorrectly stated that no additional consideration was paid for the transfer of any assets, even to the extent of the liquor stock[3] . Petitioner's argument is not novel and has been rejected by the Tax Appeals Tribunal. In ***Matter of Llargo of Lockport, Inc.***, the Tribunal rejected that petitioner's argument that no bulk sale had occurred because it merely purchased the real property housing the restaurant. By petitioner's purchase of the building, it became the transferee of the tangible business assets of the restaurant as well as a valuable intangible: the goodwill of the pre-existing restaurant known as Garlock's. Such *transfer*, resulting from petitioner's purchase of the

[3]Petitioner did ascribe a value to the liquor stock of $5,870, but that value was a total inventory value listed on the 2006 federal income tax return of 2101 Diner Corp. and did not indicate what constituted the inventory.

building, is encompassed by the *expansive* regulatory definition of "bulk sale" noted above (20 NYCRR 537.1[a][1]) and petitioner, as a bulk sale "purchaser," was properly held to be responsible for the unpaid sales tax of Garlock's Restaurant, Inc. (***Matter of Llargo of Lockport, citing Matter of North Shore Cadillac-Oldsmobile, Inc. v. Tax Appeals Tribunal***, 13 AD3d 994, 787 NYS2d 463 [2004], ***lv denied*** 5 NY3d 704 [2005]).

G. Petitioner disputed the use of the RMA study to determine the value of the assets transferred, contending that the methodology was not a recognized valuation method and was not based in finance, economics or law and that the auditor was not competent to utilize the study. Petitioner argues that the RMA study was not developed to value the assets of a closely held business, and using a few selected ratios derived from the financial statements of restaurants, lodging, hotels and motels was in error.

These arguments fail in light of the Tribunal's decision in ***Matter of Clifton Liquors***, the reliability and credibility noted by independent experts (***see Matter of 33 Virginia Place***) and the routine use of the RMA worksheet by the Bulk Sales Unit to estimate the fair market value of business assets when the Division of Taxation has not been provided a contract agreed to by both the buyer and seller. Application of the worksheet in this matter confirmed the accuracy of the auditor's use of the study for valuation purposes, where the information on the sale provided to the Division was far less forthcoming than the absence of a contract. Even after it was determined that a bulk sale had occurred, petitioner refused to acknowledged a specific, verified value of inventory or the value of goodwill transferred.

As discussed above, the RMA study and its financial ratio benchmarks are considered reliable and credible, specifically because they are drawn from financial statements that often have been reviewed by external accounting firms. It is important to remember that this tool is

used to create an estimate only where records do not exist to substantiate asset value or sales. Faced with an unrealistic value for the business assets and very few records, an auditor is granted considerable latitude in making such estimates. (***Matter of Grecian Sq. v. New York State Tax Commission***, 119 AD2d 948, 501 NYS2d 219 [1986].). If petitioner had wished to challenge the Division's methodology, using the estate tax valuation guidelines it briefly discussed in its brief, it could have done so. Instead, it chose to broadly denigrate the Division's methodology, ignore the value of the goodwill transferred and cling to the unsustainable position that the only assets transferred were the lease and a small liquor inventory for which it had no specific value.[4]

Petitioner argues that the auditor should have followed valuation rules for closely held businesses described in the Internal Revenue Service (IRS) revenue rulings and regulations, which employ a formula approach in the context of the estate tax. However, petitioner's argument quickly breaks down in light of the facts of this matter. IRS Revenue Ruling 59-60 states that there is no general formula for the many variations in valuing closely held stock (1959-1 CB 237). Instead, the determination of fair market value depends on the circumstances of each case. The Revenue Ruling directs careful analysis of, among many factors, the book value of the closely held stock and the financial condition of the business, the earning capacity of the business and whether or not the enterprise has goodwill or other intangible value. On this last item, the Ruling notes that while an element of goodwill may be earnings, such factors as the prestige and renown of the business and a record of successful operation over a prolonged period in a particular locality, may furnish support for inclusion of intangible value.

[4]In fact, petitioner did not concede the transfer of the liquor stock until it was confronted with the Application for Liquidator's Permit that the Division independently acquired from the State Liquor Authority.

Petitioner also cites to Treas Reg § 20.2031, Definition of Gross Estate; Valuation of Property. This regulation speaks to the definition of fair market value (Treas Reg § 20.2031-1[b]) and the valuation of interests in businesses (by a decedent) (Treas Reg § 20.2031-3). The latter states that the net value should consider a fair appraisal of all business assets, both tangible and intangible, the earning capacity of the business and other factors. Other factors are goodwill of the business and the economic outlook for the industry. (Treas Reg § 20.2031-2[f].) Of course, the regulation requires the submission of complete financial and other data upon which the valuation is based to corroborate the value claimed by a decedent. (Treas Reg § 2031-3.)

Other than citing to these federal sources, which relate to estate tax not sales tax, petitioner did not address the criteria or attempt to apply any of the valuation rules to the circumstances of this matter, consistent with its ongoing contention that no goodwill or other intangible was transferred from 2101 Diner Corp. to petitioner in the bulk sale. Further, the federal regulations contemplate full disclosure by a decedent of all information upon which a valuation was made. However, the Division was never provided with any information with which to establish a value for the business assets. In light of all the evidence that a value of more than $15,000.00 was warranted, it resorted to an accepted methodology to reasonably calculate the asset value, understanding that such an estimate might not be as exact as a detailed audit where there was full disclosure by petitioner. However, its use of such a method was the fault of petitioner, which did not produce the records necessary to do such an audit. Since the Division's methodology, routinely used by the Bulk Sale Unit, was reasonably calculated to reflect taxes due, it is of no import that the result may not have been precise. (***Matter of Markowitz v. State Tax Commn.***, 54 AD2d 1023, 388 NYS2d 176 [1976], ***affd*** 44 NY2d 684, 405 NYS2d 454 [1978].)

H. The petition of Suffolk Center Corp. is denied and the Notice of Determination, dated November 5, 2007, is sustained.

DATED: Troy, New York
April 7, 2011

/s/ Joseph W. Pinto, Jr.
ADMINISTRATIVE LAW JUDGE