STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
AUM SIDHDHY VINAYAK, LLC	:	DETERMINATION DTA NO. 822732
for Revision of a Determination or for Refund of of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period March 1, 2004 through August 31, 2007.	:	

Petitioner, Aum Sidhdhy Vinayak, LLC, 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 March 1, 2004 through August 31, 2007.

A hearing was held before Catherine M. Bennett, Administrative Law Judge, at the offices of the Division of Tax Appeals, One Penn Plaza, New York, New York, on November 10, 2009 at 10:30 A.M., with all briefs to be submitted by May 21, 2010, which date commenced the six-month period for issuance of this determination. Petitioner appeared by Leon, Tarlowe & Saper, CPAs (Barry Leon, CPA). The Division of Taxation appeared by Daniel Smirlock, Esq. (Osborne K. Jack, Esq., of counsel).

ISSUES

I. Whether the "unit pricing" method was a permissible method of calculating and setting forth the sales tax liability on petitioner's room rental transactions.

II. Whether the Division of Taxation properly determined that petitioner's books and records were inadequate to determine its sales tax liability for the audit period.

III. Whether the Division of Taxation utilized a reasonable and rational method to determine petitioner's sales tax liability.

IV. Whether petitioner carried its burden of proving that penalties should be abated.

FINDINGS OF FACT

1. Aum Sidhdhy Vinayak, LLC (petitioner), operated a motel, Econolodge Motel, in South Ozone Park, New York, during the period March 1, 2004 through August 31, 2007, the period in issue.

2. The Division of Taxation (Division) commenced a sales tax field audit of the books and records of the business by mailing an appointment letter dated January 25, 2007 to petitioner, informing it that the Division was conducting a sales tax field audit of its records for the period March 1, 2004 through November 30, 2006. This audit appointment letter, and an attached list of required books and records, advised petitioner that all of the business's books and records pertaining to the audit period, including cash receipts and disbursement journals, general ledgers, sales invoices, purchases invoices, cash register tapes, federal income tax returns, sales tax returns, bank statements, canceled checks and the like should be available for the auditor's review. The letter also advised that additional records and information might be required during the course of the audit.

Subsequently, by an appointment letter dated August 7, 2007, the Division extended the audit period to March 1, 2004 through August 31, 2007, and requested books and records for the updated audit period. The same list of records requested by the Division in the first letter was also attached to this second one.

3. After receiving the first appointment letter, petitioner's representative informed the Division of the volume of records that would have to be transported and the seasonal peaks of

petitioner's business. The Division's auditor in response offered to conduct a test period audit for one quarter of the audit period, but again based on the volume of records that would have had to be produced, petitioner's representative voiced an objection. The parties thereafter agreed to a one month test period audit of September 2006, which was the method utilized by the Division to review petitioner's sales records.[1]

4. The initial records available included the sales tax returns, the federal income tax returns, the bank statements, and 963 signature cards for the test period, September 2006.[2] The signature cards were intended to show that 38 rooms were rented a total of 963 times during that month. Petitioner also provided 20 invoices for the same period, showing the proper amount of tax charged. These represented room rental transactions where the customers requested receipts. Invoices corresponding to the remaining 943 did not exist.

5. Yellow signature cards represented the credit card sales and white signature cards represented the cash sales. The cards were designed to contain the name, address, date and the amount charged for the hotel room. The signature cards indicated a room rate; however, in contrast to the invoices, there was no entry for sales tax or hotel occupancy charges separately stated on the document. The Division considered the signature cards inadequate proof that petitioner had paid the proper amount of sales tax.

The invoices reviewed by the auditor contained the customer name, address, date, room charge, total charge for the stay, sales tax charged, and the hotel occupancy tax charged. The

---

[1] Only after the audit calculations were submitted to petitioner was there an objection as to the use of September as a test month.

[2] Although any testimony referring to the number of registration cards presented was as to "963," the auditor's workpapers summarized transactions from 1,022 cards. In addition, the sales receipts entries on petitioner's Exhibit 5 indicate a total of 1,020 room rental transactions for the month of September 2006. No explanation of the discrepancy between the testimony and the documentation was provided.

invoices were generally the sales receipts for customers who had made reservations and requested such documentation. If the documentation was not requested by a customer, petitioner did not routinely provide it.

6. The Division's examination of the sales records revealed that the documents did not allow the opportunity for the Division to trace any transaction back to the original source or forward to a final total. The Division did not believe there were adequate internal control procedures as to the sales operations of the business because there were no z-tapes or a complete set of invoices to substantiate the deposits, and there was no separate system of accounting for the New York State sales tax, the additional New York City sales tax or the hotel occupancy tax, at the point of sale. Petitioner did not maintain a tax accrual account and failed to provide a general ledger, balance sheet or chart of accounts.

7. A review of petitioner's bank deposits was performed and the Division determined that the bank deposits were substantially in agreement with the federal tax return and the sales tax returns. A test of the bank deposits was performed after the Division made adjustments for the hotel occupancy tax and the New York City occupancy tax. Some inconsistences in cash reporting, however, were detected by the Division. The Division noted that the ratio of cash deposits to total deposits averaged 28% in 2004, 48% in 2005 and 41% in 2006. However, in some months the same ratio was only 7%. During those months the cash deposits were inconsistent with the pattern of the business practices established by the documentation and according to that which had been confirmed by petitioner. Consequently, the Division determined that the cash deposits were so distorted that they were unusable to develop taxable sales.

8. Using petitioner's own records for September 2006, the Division estimated sales tax due. The auditor reviewed the signature cards and invoices representing credit card sales for the month of September 2006, and arrived at a total for the month of $38,323.29. This amount was multiplied by 3 to represent credit sales for a quarter, or $114,969.87. She also reviewed the signature cards and invoices representing cash sales for the test period and arrived at $45,578.71. This amount was multiplied by 3 to arrive at sales per quarter of $136,736.13. This amount was added to the credit sales ($114,969.87) to arrive at total taxable sales in the amount of $251,706.00. This amount was compared to the gross sales reported on the sales tax returns as filed for the quarter ending August 31, 2006 ($225,096.00),[3] in order to determine an error rate of 112% ($251,706.00/$225,096.00). The error rate was applied to each of the reported gross sales from petitioner's sales tax returns to yield adjusted taxable sales of $3,278,769.20. The auditor then determined from records provided by petitioner's representative, what portion of the sales tax and hotel occupancy tax total represented only the hotel occupancy tax, in order to isolate the sales tax paid. Taxable sales upon which petitioner had computed sales tax for each of the quarters were identified and compared to the adjusted taxable sales computed from the application of the error rate. The result was additional taxable sales in the amount of $1,371,587.77 for the audit period. An adjustment agreed upon by both parties in the amount of $252,042.00, stemming from sales in August 2006 that were included in the September 2006 test period, was made, to result in additional audited taxable sales of $1,119,545.77. This resulted in additional sales tax attributed to sales in the amount of $ 94,921.59 ($34,042.33 attributed to the

[3] The auditor conceded that she should have compared the sales per quarter as computed to the gross sales as reported for the quarter ending November 30, 2006; however, done correctly the error rate would have been a larger percentage (126%) and the estimated tax due also correspondingly higher. This mistake was not deemed a critical error in the auditor's methodology.

period March 1, 2004 through February 28, 2005,[4] plus $60,879.26 for the period March 1, 2005 through August 31, 2007).

9. The auditor also performed a review of capital expenditures and found that purchase invoices were missing, the records did not permit the auditor to trace any transaction back to the original source, there were insufficient internal control procedures in this area of the business, and the capital records were not able to be audited. Utilizing the depreciation schedules on petitioner's federal tax returns, capital expenditures were identified in the amount of $11,512.00 for carpets, furniture and fixtures during the period March 1, 2004 through February 28, 2005. Since petitioner could not provide invoices showing sales tax had been paid, the Division assessed an additional $992.91.

10. The auditor performed a review of expense purchase invoices to again determine if proper sales tax was paid by petitioner. The invoices for tax year 2006 were reviewed, and petitioner was unable to provide proof that it paid taxes on $1,979.70 of expense purchases for that year. Projecting the tax due in the amount of $165.80 (for the period March 1, 2004 through February 28, 2005) over the rest of the audit period, an additional $414.50, for the period March 1, 2005 through August 31, 2007, was assessed. Thus, the total tax due from expense purchase was $580.30 for the entire audit period.

11. The Division issued two notices of determination to petitioner covering the entire audit period. The first was an estimated notice, dated May 25, 2007, assessing additional sales tax due in the amount of $100,000.00 (which was eventually reduced) for the period March 1, 2004 through February 28, 2005. The circumstances surrounding the estimated notice follow.

---

[4] This amount is a portion of the $35,201.04 determined by BCMS to be due for the period 3/1/04 through 2/28/05 (***see*** Finding of Fact 11).

When the Division's auditor first contacted petitioner's representative, he was sent a power of attorney and a statute of limitations waiver to sign and return. When it appeared as though the waiver was not going to be returned to the Division in a timely manner, in an effort to protect the state's interest, the Division estimated quarterly sales at $25,000.00 per quarter, plus penalty and interest, and issued an assessment for the period March 1, 2004 through February 28, 2005. After a thorough review of evidence presented, the $100,000.00 assessment was reduced by the Bureau of Mediation and Conciliation Services (BCMS) by Conciliation Order No. 223873, issued December 26, 2008, to $35,201.04, plus penalty and interest at the applicable rates. This assessment represented additional sales and use taxes on sales, capital expenditures and expense purchases in the respective amounts of $34,042.33, $992.91 and $165.80.

The second Notice of Determination, dated May 12, 2008, assessed additional sales and use taxes due for the period March 1, 2005 through August 31, 2007 in the amount of $61,293.76, plus penalty and interest. It is comprised of sales and use taxes on sales and expense purchases in the respective amounts of $60,879.26 and $414.50.

12. Rushin Ghandi, the general manager of petitioner's motel testified at the hearing. He established that when a customer first arrives at the motel, he or she completes a registration card and makes payment, by either cash or credit card. The motel operates in three eight-hour shifts. The desk agent assigned for a particular eight-hour shift is not issued a certain number of registration cards for which he or she is responsible. Nor is there any numerical sequencing of the registration cards used within a shift or over the course of a particular day. A video recording system that was available in 2006 was the method by which petitioner kept an eye on any potentially dishonest employees handling cash. Mr. Ghandi and petitioner's owners check these

video recordings periodically for any dishonest activity, and Mr. Ghandi randomly reviews the front desk operations to insure proper compliance with cash and credit transactional reporting.

13. At the end of each shift, the amount of cash is totaled and placed into an envelope. Either that same day or the next day, Mr. Ghandi collects the envelope and sends it to the owners of the company, who then transmit the same to accounting department personnel, who are ultimately responsible for making the bank deposit. A sheet of all the daily transactions is prepared. It bears the hotel rental rate, indicates whether it was a credit or cash sale and shows total income for the day. The total income for each daily sheet is transferred to a monthly summary, at which time petitioner backs out the New York State sales tax, the New York City sales tax and the New York City hotel occupancy tax, resulting in net income.

14. Petitioner submitted into evidence nine invoices for the month of September 2006, all representative of cash transactions. Seven could be traced to the daily sheet of the corresponding date, representing income from that day. The income from a September 20, 2006 transaction could not be traced from the invoice to the daily sheet, though in addition to the invoice, a registration card existed for the customer.[5] Another invoice dated September 11, 2006, which indicated a payment collected from the customer in the amount of $128.00, could be traced to the daily sheet under the same customer name and room number. However, $49.00 of income was reported as received.

15. The registration cards for cash and credit transactions, as summarized by the auditor by date, were compared to daily sheets that totaled income corresponding to the same date. Many cards could be traced to the daily sheet by the same information summarized by the auditor: the

[5] The Division's auditor listed the information from each of the registration cards she was provided for the test month, September 2006. The information extracted included the date, customer name, room number, and the room rate.

room number, customer name or room fee. However, some registration cards bore a higher rate than what was reported as income from that customer; some postings on the daily sheet did not have a corresponding registration card; and on some days there was a significant number of cash transactions for which there were registration cards that were not recorded on the daily income sheet. Based upon the auditor's workpapers, on September 20, 2006, for example, there were 39 registration cards of customers who entered into a cash transaction with petitioner. The daily income sheet for the same day reported 21 cash transactions that could be traced to registration cards. No explanation was provided for any of the discrepancies noted, particularly the 18 unreported cash transactions for September 20, 2006.

16. Mr. Ghandi identified photos of a sign that appears at the front desk of the motel where customers check in that states: "ALL RATES INCLUDE CITY AND STATE SALES AND OCCUPANCY TAXES."

SUMMARY OF THE PARTIES' POSITIONS

17. Petitioner maintains that, as allowed by law, it utilized the "unit price" method in charging its customers a room rental rate with tax included, and complied with the corresponding requirements to provide customers with appropriate notice of its policy and maintain records that could substantiate the validity of the sales tax reported. Petitioner asserts that its books and records were accurate and complete, and were the basis upon which it reports its receipts to its franchiser, Econolodge. Petitioner believes it showed diligence and precision in the accurate recording of each transaction, illustrating petitioner's lack of willful neglect, entitling petitioner to an abatement of penalties. Petitioner additionally criticizes the Division's calculations as resulting in a tax on tax.

18. The Division asserts that petitioner failed to provide complete records in order to allow the Division to determine its tax liability, and thus, the Division was justified in resorting to a test period audit and estimated tax calculations to determine additional tax due. The Division argues that its audit methodology was reasonable, and the determination of sales and use taxes should stand, since petitioner did not carry its burden of proving the assessment erroneous. The Division also maintains that petitioner failed to provide documentation showing that it paid proper sales and use taxes on its fixed asset and expense purchases during the audit period. Lastly, the Division also asserts that petitioner failed to show reasonable cause for abatement of penalties.

CONCLUSIONS OF LAW

A. The Tax Law provides that a person required to collect tax under the law must make such collection from the customer at the time the price, amusement charge or rent to which the sales tax applies is also collected (Tax Law § 1132[a][1]). Tax Law § 1132(a)(1) also requires that when a vendor gives a customer any type of receipt, sales tax shall be separately stated on that receipt (***see also*** 20 NYCRR 532.1[b]). However, the regulations additionally provide for a situation where no written receipt is provided (20 NYCRR 532.1[b][4]), called the "unit price method." The unit price method is a means of setting forth and accounting for sales where a vendor has collected tax on a sale but where no written receipt is given to a customer. Under this method, the "unit price" is the total price, including sales tax, at which the sale is recorded, and the seller is required to make the customer aware of inclusion of sales tax in the price by visibly posting a placard stating that the prices of all taxable items include sales tax (***see*** 20 NYCRR 532.1[b][4]). In addition, the vendor may record the sales by the use of a cash register, or otherwise maintain accurate records, indicating such sales of taxable and nontaxable products.

B. There is no dispute that petitioner was responsible for the collection of New York State and City sales tax and the hotel occupancy tax, and the unit pricing method was available for petitioner to use as its method of collecting and stating sales tax on its transactions. Petitioner fulfilled the requirement that it must visibly display a placard by placing a sign at the check-in desk, which indicated that all room rates included city and state sales and occupancy taxes. Petitioner's nine sales invoices that were introduced into evidence displayed a round number as the final amount collected from the customer, with the taxes backed out from that amount, leaving the net room rate an odd number. From all appearances, petitioner handled all of its transactions, cash and credit, in the same manner: stating a rate to the customer that included all the taxes. The issue in this case is not whether petitioner could use the unit pricing method as a pricing and accounting mechanism, but rather whether, once used, the records maintained by petitioner were sufficient for the Division to determine that the proper amount of sales were recorded, and the proper amount of sales tax was collected and remitted.

C. Under Tax Law § 1135(a), "[e]very person required to collect tax shall keep records of every sale . . . in such form as the commissioner of taxation and finance may by regulation require." These records must be kept in a manner suitable to determine the correct amount of tax due and must be available for the Division's inspection upon request (Tax Law § 1135[g]; 20 NYCRR 533.2[a][2]). The regulations provide that among the sales records required to be maintained are "sales slip, invoice, receipt, contract, statement or other memorandum of sale, . . . guest check, . . . cash register tape and any other original sales document" (20 NYCRR 533.2[b][1]). Failure to maintain or make available such records, or the maintenance of inadequate records, can result in the Division's estimation of the amount of tax due (Tax Law § 1138[a]). It has been well established that the Division may, in appropriate circumstances,

resort to indirect auditing methods, including the use of test periods and projections therefrom, in arriving at its estimated determination of tax due. However, in ***Matter of Chartair v. State Tax Commn.*** (65 AD2d 44, 411 NYS2d 41 [1978]), the Court stated:

> Although there is statutory authority for the use of a "test period" to determine the amount of tax due when a filed return is incorrect or insufficient (Tax Law § 1138, subd. [a]), resort to this method of computing tax liability must be founded upon an insufficiency of record keeping which makes it virtually impossible to verify taxable sales receipts and conduct a complete audit (citations omitted). However, if records are available from which the exact amount of tax can be determined, the estimate procedures adopted by the respondent become arbitrary and capricious and lack a rational basis (citation omitted) (***Id.*** 411 NYS2d at 46).

D. Because the statutory and decisional authority allowing for a taxpayer's sales tax liability to be calculated by estimate procedures rests upon a finding that the taxpayer's books and records are inadequate to conduct a complete audit, the Division is required to first request (***Matter of Christ Cella v. State Tax Commn.***, 102 AD2d 352, 353, 477 NYS2d 858, 859 [1984]) and thoroughly examine (***Matter of King Crab Rest. v. Chu***, 134 AD2d 51, 53, 522 NYS2d 978, 979-980 [1987]) the taxpayer's books and records for the entire period of the proposed assessment (***Matter of Adamides v. Chu,*** 134 AD2d 776, 778, 521 NYS2d 826, 828 [1987], ***lv denied*** 71 NY2d 806, 530 NYS2d 109 [1988]), in order to determine from verification drawn independently from within these records whether they are sufficient to support a complete audit (***Matter of Meyer v. State Tax Commn.***, 61 AD2d 223, 225, 402 NYS2d 74, 76 [1978], ***lv denied*** 44 NY2d 645, 406 NYS2d 1025 [1978]). If the Division's examination establishes that the taxpayer's records are adequate and complete, the taxpayer is entitled to have its assessment calculated base upon a detailed audit of those records (***Matter of James G. Kennedy & Co. v. Chu,*** 125 AD2d 773, 509 NYS2d 199 [1986]). In contrast, when a taxpayer's records are incomplete and unreliable for determining sales, the Division may resort to a test-period audit

using external indices (***Matter of Skiadas v. State Tax Commn.***, 95 AD2d 971, 972, 464 NYS2d 304, 305 [1983]).

In this case, the Division made clear written requests for books and records twice during the audit, and numerous times verbally as well. In response to those requests, petitioner's representative and general manager objected on the basis that the records were too voluminous to produce. The parties eventually came to an agreement that a test period of September 2006 would be used to ease this burden. However, this agreement was in no way permission to produce less than complete and accurate records from which the Division could determine that petitioner was recording all sales and remitting the proper amount of sales tax. Petitioner provided room registration cards for the test month. It is not clear as to whether there were 963 or 1,022 registration cards representing room rental transactions. The registration cards did not bear any sequential numbering, nor were there any other controls to be sure they were all accounted for on a daily basis. There were no cash register or other tapes recording individual transactions. The daily sheet, which allegedly bore a listing of each transaction for September 2006, showed significant discrepancies, particularly as to unreported cash transactions, when compared to the registration cards for the same days. There were no internal controls over the flow of cash, from original collection to deposit and reporting. Even if the daily sheets could have been reconciled to the bank statements and ultimately the tax returns, the fact that at the first level of recording the transactions were not properly recorded meant that the same discrepancies would simply carry all the way through. Any consistency in that flow did not exist. Further, as to expense purchases and fixed asset acquisitions, petitioner simply did not retain sufficient documentation to prove that the sales tax had been properly paid. The Division's conclusion that the records were inadequate to support a determination that proper sales tax had

been remitted is well supported and paved the way for the Division's calculation of estimated tax.

E. Where the Division has established entitlement to the use of indirect auditing methods, the burden of overcoming the results of such an audit rests upon the taxpayer, who must prove by clear and convincing evidence that the audit method is unreasonable (***Matter of Surface Line Operators Fraternal Organization. v. Tully***, 85 AD2d 858, 446 NYS2d 451 [1981]; ***Matter of Cousins Serv. Station***, Tax Appeals Tribunal, August 11, 1988), or that the amount of the assessment is erroneous (***Matter of Rizzo v. Tax Appeals Tribunal***, 210 AD2d 748, 621 NYS2d 115 [1994]; ***Matter of Mobley v. Tax Appeals Tribunal***, 177 AD2d 797, 799, 576 NYS2d 412 [1991], ***appeal dismissed*** 79 NY2d 978, 583 NYS2d 195 [1992]; ***Matter of Surface Line Operators Fraternal Organization v. Tully***; ***Matter of Scarpulla v. State Tax Commn.***, 120 AD2d 842, 502 NYS2d 113 [1986]). In addressing the method of audit, "[c]onsiderable latitude is given an auditor's method of estimating sales under such circumstances as exist in [each] case" (***Matter of Grecian Sq. v. Tax Commn.*** 119 AD2d 948, 950, 501 NYS2d 219, 221 [1986]). Furthermore, a presumption of correctness attaches to a notice issued by the Division, and the taxpayer must overcome this presumption (***see Matter of Suburban Carting Corporation***, Tax Appeals Tribunal, May 7, 1998, citing ***Matter of Tavolacci v. State Tax Commn.***, 77 AD2d 759, 431 NYS2d 174 [1980]; ***Matter of Leogrande***, Tax Appeals Tribunal, July 18, 1991, ***confirmed*** 187 AD2d 768, 589 NYS2d 383 [1992], ***lv denied*** 81 NY2d 704, 595 NYS2d 398 [1993]).

Petitioner's primary focus in this case has been the Division's alleged rejection of petitioner's unit pricing tax inclusive methodology of charging and recording sales tax on its room rentals. In addition, petitioner proposes that the methodology used by the Division to

calculate estimated taxes due resulted improperly in tax on tax, since petitioner's sales receipts already included the tax, and the Division made such calculations ignoring that fact. Petitioner's argument has no merit.

Petitioner was not denied the right to use the unit pricing method, nor did the Division in any way penalize petitioner for using this method to record the sales tax charged and collected, given its high volume of room rental activity. Petitioner has simply failed to meet all the requirements that accompany this method, particularly the internal controls and accounting mechanism implicitly needed to assure the Division that the proper amount of sales tax was remitted based upon petitioner's operations. If petitioner had provided adequate books and records for the Division to conduct an audit, and the Division made the same calculations as in this case, the Division could be rightfully be accused of creating a tax on tax situation. Since the accuracy of petitioner's reported sales receipts and sales tax paid was doubtful, as a result of inadequacy in petitioner's own records and record keeping, the Division was justified in estimating taxes due and used a reasonable audit method to do so. The Division used petitioner's own records, and when it was concluded that reported sales were not equal to actual sales, additional liability was estimated. It is well settled that the Division is granted a great deal of latitude in the method it chooses, and the presumption of correctness attaches to the resulting notice of liability. Petitioner has failed to overcome such presumption due to an absence of clear and convincing evidence that the audit methodology was unreasonable or that the assessment was erroneous (***Matter of Surface Line Operators Fraternal Organization v. Tully***; ***Matter of Scarpulla v. State Tax Commn.***). Instead petitioner's own submission of evidence revealed a significant number of unreported cash transactions. Accordingly, the results of the assessments will not be altered.

F. Tax Law § 1145(a)(1)(i) imposes a penalty upon persons who fail to timely file a return or timely pay the tax imposed by Articles 28 and 29 of the Tax Law. The penalty and additional interest may be waived if "such failure or delay was due to reasonable cause and not due to willful neglect" (Tax Law § 1145[a][1][iii]). In determining whether reasonable cause and good faith exist, the regulations provide several specific grounds and also a catchall, which provides for a finding of reasonable cause based upon any ground for delinquency which would appear to a person of ordinary prudence and intelligence as a reasonable cause for delay, demonstrating an absence of willful neglect (20 NYCRR 2392.1[d][5]). The taxpayer bears the burden of establishing that its actions were based upon reasonable cause and not willful neglect (***see Matter of Philip Morris***, Tax Appeals Tribunal, April 29, 1993; ***Matter of MCI Telecommunications Corp***., Tax Appeals Tribunal, January 16, 1992, ***confirmed*** 193 AD2d 978, 598 NYS2d 360 [1993]; 20 NYCRR 3000.15[d][5]). Petitioner has not offered any information that would allow for an abatement of penalties, and therefore, has not carried this burden.

G. The petition of Aum Sidhdhy Vinayak, LLC is hereby denied, and the Notice of Determination dated May 25, 2007, as adjusted (***see*** finding of fact 11), and the Notice of Determination dated May 12, 2008 are sustained.

DATED: Troy, New York
November 24, 2010

/s/ Catherine M. Bennett
ADMINISTRATIVE LAW JUDGE