

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ELEANOR LEONARD	:	DECISION
D/B/A LEONARD ELEANOR INTERIORS	:	
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 June 1, 1975	:	
through November 30, 1978.	:	

Petitioner, Eleanor Leonard, d/b/a Leonard Eleanor Interiors, 12 Garden Street, Great Neck, New York 11020, 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 June 1, 1975 through November 30, 1978 (File No. 28665).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 19, 1983 at 10:45 A.M. Petitioner appeared by Leon A. Kweit, CPA. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopelitto, Esq., of counsel).

ISSUE

Whether the Audit Division properly determined additional sales taxes due from petitioner based on an examination of available books and records.

FINDINGS OF FACT

1. Petitioner, Eleanor Leonard, d/b/a Leonard Eleanor Interiors, was an interior designer. Petitioner also sold and installed tangible personal property in conjunction with the rendition of her design services.

2. On April 20, 1979, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering

the period June 1, 1975 through November 30, 1978 for taxes due of \$20,267.74, plus penalty and interest of \$8,081.16, for a total of \$28,348.90. The taxes due on said notice were estimated because petitioner did not provide books and records for audit.

3. The Audit Division issued a Notice of Assessment Review to petitioner which revised the taxes due to \$6,049.93 plus penalty and interest of \$3,168.83 for a total of \$9,218.76. Said revision was based on petitioner's cash receipts journal for the period March 1, 1977 through February 28, 1978. The cash receipts totaled \$99,287.36. Sales taxes reported due for this period of \$4,794.17 was deducted from the cash receipts, leaving a balance of \$94,493.19 which the Audit Division considered gross sales. Petitioner did not provide any substantiation for any nontaxable sales and therefore the Audit Division held all sales taxable. Petitioner reported taxable sales of \$62,185.00 for the above period, leaving additional taxable sales of \$32,308.19 or an increase of 51.95 percent. This percentage was applied to reported taxable sales for the audit period to determine total additional taxable sales of \$81,313.00 and taxes due thereon of \$6,049.93.

4. At the hearing, petitioner submitted sales invoices for the entire period under review and an analysis of such invoices showing the following results:

gross sales	\$251,699.20
taxable sales	167,134.06
nontaxable sales	84,565.14
sales tax due	12,449.11
sales tax paid	11,814.60
additional taxes due	634.51

5. Petitioner substantiated nontaxable sales of \$84,265.14 which consisted of design fees, consultation fees, delivery and shipping charges, supervision

and out-of-state deliveries. Petitioner erroneously included a taxable installation charge of \$300.00 in the nontaxable sales category of its analysis.

6. Petitioner acted in good faith at all times and did not willfully neglect to pay over the taxes at issue.

CONCLUSIONS OF LAW

A. That since the books and records provided by petitioner for audit were incomplete and insufficient, the Audit Division properly estimated petitioner's tax liability in accordance with the provisions of section 1138(a) of the Tax Law. The Audit Division reasonably calculated petitioner's liability with the limited information available at the time of audit and the burden of showing that the determination was erroneous rests with petitioner (Matter of Surface Line Operators Fraternal Organization, Inc. v. Tully, 85 A.D. 2d 858).

B. That petitioner demonstrated by the evidence set forth in Finding of Fact "5" that it made nontaxable sales of \$84,265.14. Accordingly, the additional taxes due are reduced to \$655.51 (\$634.51 & 21.00 on disallowed nontaxable sale).

C. That the penalty is cancelled and interest shall be reduced to the minimum amount prescribed by law.

D. That the petition of Eleanor Leonard d/b/a Leonard Eleanor Interiors is granted to the extent indicated in Conclusions of Law "B" and "C"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 20, 1979 as revised

in accordance with the Notice of Assessment Review; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

MAR 21 1984


PRESIDENT


COMMISSIONER


COMMISSIONER