

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petitions
of
A & B ALARMS, INC.
for Revision of Determinations or for Refund
of Sales and Use Taxes under Articles 28 and 29
of the Tax Law for the Period June 1, 1975
through May 31, 1979.

**AMENDED
DECISION**

Petitioner, A & B Alarms, Inc., 79 River Heights Drive, Smithtown, New York 11787, filed petitions for revision of determinations or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1975 through May 31, 1979 (File No. 31664).

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 February 2, 1983 at 9:15 A.M., with additional evidence to be submitted by May 15, 1984. Petitioner appeared by Gerald Kudler, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether the Audit Division properly disallowed petitioner's reported nontaxable sales for the period June 1, 1975 through May 31, 1979.

FINDINGS OF FACT

1. Petitioner, A & B Alarms, Inc., sold, installed, operated and maintained burglar alarm systems. Petitioner offered both local and central station alarm systems. A local alarm system is an outside sounding device installed on the customer's premises. A central station system is one connected by leased telephone lines to a central station where signals are received and monitored

by petitioner. In connection with a central station system, petitioner charges a monthly fee for monitoring this system.

2. On February 27, 1978, 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, 1976 for taxes due of \$2,652.80, plus penalty and interest of \$1,160.19, for a total of \$3,812.99. On January 31, 1980, a second notice was issued for the period December 1, 1976 through May 31, 1979 for taxes due of \$5,818.19, plus interest of \$831.17, for a total of \$6,649.36.

The foregoing notices were issued as a result of petitioner's failure to substantiate the nontaxable sales reported on sales tax returns filed. This information was requested by the Audit Division through correspondence.

3. Petitioner executed a consent extending the period of limitation for assessment of sales and use taxes for the period at issue, to June 20, 1980.

4. Petitioner timely filed petitions for redetermination of the above deficiencies.

5. Following a pre-hearing conference, the Audit Division examined certain books and records provided by petitioner. The Audit Division found that these books and records (deposit slips, customer ledger sheets, purchase invoices) were incomplete and inadequate for purposes of verifying nontaxable sales. It did determine, however, that sales tax was included in the gross sales reported by petitioner so that the additional taxable sales were overstated. (The Audit Division accepted the accuracy of gross sales reported in making the adjustment for the overstatement.) In addition, a review of purchase invoices for the period March 1, 1979 through May 31, 1979 disclosed that sales tax was paid on 29.06 percent of materials purchased. Since all of petitioner's sales

were held taxable,¹ the Audit Division recommended that petitioner be given credit for such taxes paid.² Based on the above audit, the Audit Division revised the taxes due as follows: Notice #90,727,864 - \$2,138.86 (June 1, 1975 through November 30, 1976) and Notice #S800124400C - \$5,048.47 (December 1, 1976 through May 31, 1979).

6. Petitioner admitted that it cannot produce the books and records necessary to substantiate its nontaxable sales for the period at issue. Michael Halpern, president of petitioner corporation testified that the business, at present, operates in substantially the same manner as during the audit period and requested that it be allowed to submit records for a current period, for the Audit Division's evaluation of its method of reporting taxable and nontaxable sales.

Petitioner's request was granted and petitioner was instructed to submit records for the period March 1, 1980 through May 31, 1980 by March 31, 1983. Petitioner submitted an analysis of bank deposits for this period showing taxable sales, nontaxable sales and sales tax collected. Nontaxable sales amounted to \$11,146.35. Exemption certificates which accompanied the analysis substantiated \$5,398.64 or 48 percent of nontaxable sales. The nontaxable sales consisted of installations that resulted in a capital improvement to real property and sales to municipalities.

CONCLUSIONS OF LAW

A. That section 1132(c) of the Tax Law specifically provides, in part, that it shall be presumed that all receipts for property or services are

¹ Petitioner erroneously collected tax on the monthly charge for monitoring a central station alarm system.

² Petitioner should have been allowed a credit for taxes paid only on materials which were actually resold or rented to its customers.

subject to tax until the contrary is established, and the burden of proving that any receipt is not taxable shall be upon the person required to collect tax.

Based on the records submitted for the period March 1, 1980 through May 31, 1980 (Finding of Fact "6"), the disallowed nontaxable sales for the audit period are reduced by 48 percent.

With respect to the remaining 52 percent, petitioner failed to overcome its burden of proof and therefore is liable pursuant to section 1133(a) of the Tax Law for the additional taxes determined by the Audit Division.

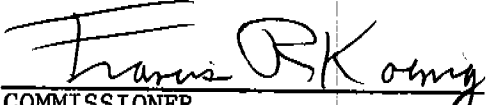
B. That the petitions of A & B Alarms, Inc. are granted to the extent that the additional taxes due shall be reduced in accordance with Finding of Fact "5" and Conclusion of Law "A"; that in all other respects the notices of determination and demand for payment of sales and use taxes due issued February 27, 1978 and January 31, 1980, are sustained.


DATED: Albany, New York

DEC 31 1984

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER