

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SAMNAT ENTERPRISES, INC.	:	DECISION
AND JOSEPH GLANZBERG,	:	
INDIVIDUALLY AND AS OFFICER	:	
	:	
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, 1977	:	
through February 28, 1981.	:	

Petitioners, Samnat Enterprises, Inc. and Joseph Glanzberg, individually and as officer, 19 Daell Lane, Centereach, New York 11720, 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 December 1, 1977 through February 28, 1981 (File No. 35831).

A formal 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 September 10, 1984 at 1:15 P.M., with all briefs to be submitted by December 31, 1984. Petitioner Samnat Enterprises, Inc. appeared by its President, Joseph Glanzberg. Petitioner Joseph Glanzberg appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly estimated the tax liability of petitioner Samnat Enterprises, Inc. on the basis of external indices.

II. Whether petitioner Joseph Glanzberg was personally liable for the taxes due from Samnat Enterprises, Inc.

FINDINGS OF FACT

1. On November 23, 1980, petitioner Samnat Enterprises, Inc. ("Samnat") was observed making sales of leather coats and hats at a flea market at Roosevelt Raceway in Nassau County. The Audit Division's record of the field visit to the flea market indicated the following information: one sale of approximately \$55.00 was observed in a fifteen minute period; the sales price of the coats ranged from \$50.00 to \$100.00 and hats sold for \$5.00; inventory consisted of approximately 100 coats and two cartons of hats; the rent paid was \$25.00 per location; petitioner had a double location inside and one outside location.

2. The Audit Division reviewed its files and found that Samnat filed sales tax returns for the quarterly periods ending May 31, 1978, August 31, 1978 and November 30, 1978 and reported no sales. Sales tax returns were not filed for any other periods.

The Audit Division contacted Samnat to conduct an audit; however, Samnat never produced any books and records.

3. Since Samnat failed to produce books and records for audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Samnat on June 29, 1981 covering the period December 1, 1977 through February 28, 1981 for taxes due of \$56,160.00, plus penalty and interest of \$23,112.00, for a total of \$79,272.00.

On the same date, an identical notice was issued to Joseph Glanzberg, individually and as officer of Samnat.

4. The taxes due on the above notices were estimated based on sales of \$60,000.00 per quarter. These sales were computed as follows:

rent per location	\$ 25.00
x 6 locations (1 double inside and 1 outside on Saturday and Sunday)	<u>x 6</u>
total rent paid per week	\$ 150.00
x 13 weeks per quarter	<u>x 13</u>
total rent paid per quarter	\$ 2,000.00
x 30 (sales compared to rent expense are 30 times rent paid. Data obtained from Dun and Bradstreet publication "Cost of Doing Business")	<u>x 30</u>
	\$60,000.00

5. Subsequent to the issuance of the notices, Samnat produced a check stub register which indicated that Samnat also paid rent for space at flea markets located at Aqueduct Racetrack, Belmont Racetrack, Empire State Fleamarket in Portchester and Canarsie Flea Market in Brooklyn.

6. The Audit Division issued notices of assessment review which adjusted the taxes due to \$50,400.00. Samnat did not commence business until April 1, 1978. Consequently, estimated sales for the period ending February 28, 1978 and for March, 1978 were deleted.

7. At the hearing, the Audit Division conceded that the taxes due should be reduced to \$30,333.32 based on adjusting the estimated sales using a factor of 20 times the rent paid.

8. Samnat argued that the taxes determined due by the Audit Division were excessive for the following reasons:

- a) the business was not operated during June, July and August;
- b) the rent paid was \$17.00 rather than \$25.00 and it never operated an inside and outside location at the same time;
- c) the observation by the Audit Division was in November when sales are higher than normal because of Christmas.

Samnat offered no evidence to support the foregoing arguments. Petitioner Joseph Glanzberg also produced no evidence with respect to his personal liability as an officer. Mr. Glanzberg operated the day-to-day

business operations of Samnat. Petitioners were given until October 30, 1984 and extended upon request to November 30, 1984 to submit any evidence to substantiate their positions. No such evidence was submitted.

CONCLUSIONS OF LAW

A. That section 1135(a) of the Tax Law provides that every person required to collect tax shall keep records of every sale and all amounts paid, charged or due thereon and of the tax payable thereon. Such records shall include a true copy of each sales slip, invoice, receipt or statement.

Petitioner Samnat failed to maintain books and records as required by section 1135(a) of the Tax Law. Accordingly, the Audit Division properly estimated the taxes due on the basis of external indices pursuant to section 1138(a) of the Tax Law.

B. That the estimate procedures adopted by the Audit Division were reasonable under the circumstances and Samnat failed to sustain its burden to demonstrate by clear and convincing evidence that the method of audit or the amount of tax assessed was erroneous (Matter of Surface Line Operators Fraternal Organization, Inc. v. State Tax Commission, 85 A.D.2d 858).

C. That petitioner Joseph Glanzberg was a person required to collect tax within the meaning and intent of section 1131(1) of the Tax Law and, therefore, is personally liable for the taxes due from Samnat in accordance with section 1133(a) of the Tax Law.

D. That the petition of Samnat Enterprises, Inc. and Joseph Glanzberg, individually and as officer is denied and the notices of determination and demand for payment of sales and use taxes due issued June 20, 1981 are sustained.

DATED: Albany, New York

JUN 28 1985

STATE TAX COMMISSION

Radwan A. Abu
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Smith
COMMISSIONER