

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

BOYCHUCK'S INC.

DECISION

for Revision of a Determination or for Refund  
of Sales and Use Taxes under Articles 28 and  
29 of the Tax Law for the Periods Ending  
November 30, 1980 and February 28, 1981

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Petitioner, Boychuck's Inc., 701 Addison Road, Painted Post, New York 14870 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 periods ending November 30, 1980 and February 28, 1981, (File No. 35852).

A Small Claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 164 Hawley Street, Binghamton, New York, on December 19, 1984 at 10:45 A.M. Petitioner appeared by its President, Ben Vetter. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq. of counsel).

#### ISSUE

Whether reasonable cause exists for the abatement of the penalty asserted against petitioner for failure to file part-quarterly returns for the periods ending November 30, 1980 and February 28, 1981.

#### FINDINGS OF FACT

1. Petitioner, Boychuck's Inc., timely filed New York State and Local Sales and Use Tax Returns (ST-100) for the quarterly periods ending May 31, 1980, August 30, 1980, November 30, 1980 and February 28, 1981. Petitioner reported taxable sales in excess of \$300,000.00 on each of said returns.

2. The Audit Division issued notices and demands for payment of sales and use taxes due against petitioner for the periods ending November 30, 1980 and February 28, 1981. Said notices asserted penalties of \$773.55 and \$1,040.07, respectively, for failure to file part-quarterly returns for those periods as required by section 1136(a) of the Tax Law.

3. Petitioner made two separate requests to the Department of Taxation and Finance that the foregoing penalties be abated. The Processing Division issued notices of assessment review on September 15, 1981 and November 23, 1981 both of which sustained the penalties assessed.

4. On December 9, 1981, petitioner filed a petition seeking a revision of the determination that penalties were properly assessed.

5. Petitioner was formed in August, 1977 and was primarily engaged in the sale of gasoline, diesel fuel and fuel oil. Petitioner also sold beer, cigarettes and grocery items. In March 1980, petitioner purchased a retail gasoline service station business. With the sales from the new business, petitioner's sales exceeded \$300,000.00 for the period ending May 31, 1980 and all subsequent periods.

6. Petitioner argued that it was unaware of the requirement to file monthly part-quarterly returns when taxable sales exceeded \$300,000.00. Petitioner argued further that it filed quarterly returns for the periods ending May 31, 1980 and August 31, 1980 which reported taxable sales in excess of \$300,000.00 and was not notified by the State that such returns were filed erroneously. Petitioner took the position that the State had that responsibility and since it did not give notification, the penalties should be abated.

7. petitioner timely filed sales tax returns for all periods preceding March 1, 1980 and paid the sales taxes due shown thereon. Petitioner commenced filing monthly part-quarterly returns once it was aware of such requirement. The failure to file part-quarterly returns for the periods at issue herein was not due to willful neglect.

8. New York State and Local Sales and Use Tax Returns (ST-100) state in bold type print:

"IF THE AMOUNT REPORTED IN BOXES B & C ABOVE TOTALS \$300,000 OR MORE, YOU ARE REQUIRED TO FILE RETURNS MONTHLY. CONTACT THE SALES TAX PROCESSING UNIT OR LOCAL DISTRICT TAX OFFICE IMMEDIATELY FOR FURTHER INFORMATION."

CONCLUSIONS OF LAW

A. That section 1136(a) of the Tax Law provides, in part, that every person required to register with the Tax Commission whose taxable receipts total three hundred thousand dollars or more in any quarter shall, in addition to filing a quarterly return, file a part-quarterly monthly return with the Tax Commission.

B. That section 1145(a)(1)(i) of the Tax Law provides for the imposition of penalty and interest for failure to file a return or pay over any tax when due. Subdivision (ii) of said section provides for the remission of penalty and that portion of interest that exceeds the minimum statutory rate if the Tax Commission determines that the failure or delay was due to reasonable cause and not due to willful neglect.

C. That 20 NYCRR 536.1(b) sets forth the grounds for reasonable cause. The first five specifically enumerated grounds are inapplicable in this case. The sixth ground is as follows:

"(6) any other cause for delinquency which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a return and which clearly indicates an absence of gross negligence or willful intent to disobey the taxing statutes. Ignorance of the law,

however, will not be considered reasonable cause" (emphasis added).


D. That although petitioner's failure to file timely part-quarterly returns was not due to gross negligence or willful intent, it was due to ignorance of the law. Accordingly, no grounds for reasonable cause have been shown.


E. That the petition of Boychuck's Inc. is denied and the notices and demands for payment of sales and use taxes due are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 28 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER