

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
TRACI AUTO CARE, INC.	:	
AND	:	DECISION
RONALD NUZZARO, OFFICER OF TRACI AUTO CARE, INC.	:	
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,	:	
1978 through November 30, 1981.	:	

Petitioners, Traci Auto Care, Inc., and Ronald Nuzzaro, Officer of Traci Auto Care, Inc., 17 McKinley Street, Bronville, New York 10708, 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, 1978 through November 30, 1981 (File Nos. 38279 and 38529).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 23, 1985 at 1:15 P.M. with all briefs to be submitted by September 23, 1985. Petitioners appeared by Martin Szold, Esq. The Audit Division appeared by John P. Dugan, Esq. (Mark F. Volk, Esq., of counsel).

ISSUE

Whether the Audit Division, based on estimates, properly determined petitioner Traci Auto Care, Inc.'s repair sales and the resultant sales tax liability.

FINDINGS OF FACT

1. On March 12, 1982, the Audit Division, as the result of a field audit, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Traci Auto Care, Inc. ("the corporation") assessing sales taxes due of \$112,171.05, plus penalty of \$22,102.23 and interest of \$24,154.68, for a total due of \$158,427.96 for the period December 1, 1978 through November 30, 1981. On the same date, the Audit Division issued a similar notice against petitioner Ronald Nuzzaro as an officer of the corporation.

2. Traci Auto Care, Inc., a New York corporation, operated an ATI service station at 22 South West Street, Mount Vernon, New York. Presumably, Ronald Nuzzaro was the sole officer and shareholder of the corporation. On or about September 1, 1981, due to financial difficulties, Mr. Nuzzaro vacated the business premise leaving his books and records.

3. In or about October 1981, the Audit Division attempted to perform an audit of the corporation's books and records. The audit was precipitated by the fact that for the quarterly period ended May 31, 1980, the corporation purchased 12,132 gallons of gasoline (which would normally yield taxable sales of approximately \$16,415.00) but reported taxable sales for said quarter of \$1,358.00. When it appeared that no books and records would be forthcoming, the auditor used external indices to determine the corporation's taxable sales. Gasoline sales were estimated based on information supplied by A. Tarricone, Inc., the corporation's gasoline supplier. Repair sales were estimated at \$62,400.00 per quarter (\$50 per hr. x 8 hrs. per day x 6 days per week x 13 weeks per quarter x 2 bays). The auditor finally determined additional taxable sales of \$1,616,472.05 and additional sales tax due of \$112,171.05.

4. As the result of a pre-hearing conference, the corporation's quarterly taxable sales were determined to be \$47,615.00. Gasoline sales were estimated at \$16,415.00 per quarter (see Finding of Fact "3") and repair sales, as determined above, were halved to \$31,200.00 per quarter (estimated repair sales of \$400.00 per day per bay were reduced to \$200.00 per day per bay). No explanation was given for the reduction in either the gasoline or repair sales. Additional sales taxes due as a result of the conference were determined to be \$42,348.00.

5. At the hearing, petitioners stipulated that the gasoline sales determined at the conference were essentially correct and that they were only contesting the estimated repair sales.

6. During the period at issue, the corporation's sales gradually declined due to Mr. Nuzzaro's inability to obtain credit and a gasoline shortage during 1979. The corporation had no employees other than Mr. Nuzzaro who pumped gas and also performed repair services. During the period at issue, the corporation's repair sales were approximately \$400.00 per week.

CONCLUSIONS OF LAW

A. That the record herein establishes that the corporation's repair sales during the period at issue were \$400.00 per week and that the corporation conducted no business after September 1, 1981.

B. That the petition of Traci Auto Care, Inc. and Ronald Nuzzaro is granted to the extent indicated in Conclusion of Law "A"; that the Audit Division is hereby directed to modify the notices of determination and demand

for payment of sales and use taxes due issued March 12, 1982 and adjusted at the pre-hearing conference (see Findings of Fact "4"); and that except as so granted, the petitions are denied.

DATED: Albany, New York

DEC 13 1985

STATE TAX COMMISSION

Rodica W. Allen
PRESIDENT

Francis R. Koenig
COMMISSIONER

[Signature]
COMMISSIONER