STATE OF NEW YORK

STATE TAX COMMISSION

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In The Matter of the Petition

of

LANTY CORPORATION

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, 1979
through November 30, 1981.

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:                    DECISION
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Petitioner, Lanty Corporation, 194 North Bedford Road, Mt. Kisco, New York
10549 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,
1979 through November 30, 1981 (File No. 41107).

A 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
May 8, 1985 at 1:15 pm.

Petitioner appeared by Richard B. Soscia, C.P.A. The Audit Division
appeared by John P. Dugan, Esq. (Joseph Pinto, Esq., of counsel).

### ISSUE

Whether the Audit Division properly determined additional sales taxes due
based on third party verification of petitioner's purchases.

### FINDINGS OF FACT

1. Petitioner, Lanty Corporation ("Lanty"), operated a B.P. gasoline
station.

2. By letter dated June 11, 1982, the Audit Division made a request for
Lanty's financial records and books in order to conduct a field audit. This
request was renewed by telephone on August 11, 1982 and August 16, 1982. The
petitioner failed to provide the requested records.

3. In September, 1982, the Audit Division went forward with an audit based upon third party verification, i.e. purchase records obtained from Lanty's supplier of gasoline. At that time, Lanty was no longer doing business but the Audit Division was not aware of when Lanty began business. The supplier furnished purchase records for the period September 1, 1980 through November 30, 1981. The records prior to this period were destroyed by fire.

The gallons of gasoline purchased were categorized by grade of gasoline. The average retail markup for each grade was then applied to the number of gallons to calculate Lanty's gross profits for the period. The gross profits were added to the cost of purchases and after deducting the State gasoline tax, arrived at taxable sales of $1,925,033.03 for the period September 1, 1980 through November 30, 1981. Lanty reported taxable sales of $907,427.00 for the same period, leaving additional taxable sales of $1,017,606.03 or an increase of 112.14 percent. Sales were estimated for the period for which no purchase records were available (June 1, 1979 to August 31, 1980) based on the same sales computed for the comparable quarter in 1981. The combined additional taxable sales amounted to $3,234,837.50 with tax due thereon of $161,937.30.

4. On September 20, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to Lanty Corp. for the period June 1, 1979 through November 30, 1981. The notice assessed a tax due of $161,937.30 plus penalty of $37,733.04 and interest of $43,832.07 for a total of $243,502.41. On the same date a notice for an identical amount was issued against Anthony Wallace individually and as an officer of Lanty.

5. Subsequent to the issuance of the notice, petitioner submitted to the Audit Division a lease between Spain Oil Corporation and Lanty Corporation which showed that Lanty operated the gasoline station from October 1, 1980

to September 15, 1981. Based on the period of the lease, the Audit Division revised the liability to $51,075.72.

6. Lanty maintained no purchase invoices or records to verify its gasoline purchases. Furthermore, no sales journals, ledgers or sales receipts were kept. At the hearing, petitioner submitted a ledger sheet purporting to summarize its monthly gasoline sales, taxable sales and tax due. This summary was said to be based upon deposits of cash receipts made to Lanty's bank account. The petitioner asserted the adequacy of this record for the purpose of estimating its tax liability.

7. Petitioner argued that the ledger cards provided by Lanty's supplier and used by the Audit Division as a record of Lanty's purchases were unreliable unless substantiated against the supplier's delivery receipts. Lanty offered in evidence an affidavit signed by William Kerrigan, Manager of Operations of Lanty's supplier, stating that based on his personal knowledge of Lanty's business operations, "the receipts used to assess the additional tax liability were grossly overstated." This overstatement was attributed to mistakes made by the supplier in posting the ledger cards.

## CONCLUSIONS OF LAW

A. That section 1135 of the Tax Law requires every person required to collect tax to maintain records of every sale and to make such records available to the State for audit purposes. When records which would enable the Audit Division to determine the petitioner's exact sales tax liability are unavailable or insufficient, the Audit Division may properly estimate the taxes due on the basis of external indices including third party verification pursuant to section 1138(a) of the Tax Law. (Matter of Meyer v. State Tax

Commission, 61 A.D.2d 223).

B. That Lanty kept no records from which it would have been possible to verify its taxable sales receipts; accordingly, the Audit Division resorted to a method reasonably calculated to reflect the taxes due. Lanty failed to carry its burden of demonstrating by clear and convincing evidence that the method of audit or the amount of tax assessed was erroneous (Matter of Convissar v. State Tax Commission, 69 A.D.2d 929).

C. That Lanty began doing business on October 1, 1980 and ceased doing business on September 15, 1981; therefore Lanty's tax liability is reduced to $51,075.72.

D. That the petition of Lanty Corporation is granted to the extent indicated in Conclusion of Law "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 September 20, 1982; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

NOV 07 1985

STATE TAX COMMISSION

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PRESIDENT

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COMMISSIONER

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COMMISSIONER