

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT W. BILICKI AND DONALD J. BILICKI
D/B/A BOB'S ROCKY POINT SERVICE STATION

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 September 1, 1979 :
through February 28, 1981.

In the Hatter of the Petition

of

BOB'S ROCKY POINT SERVICE STATION

for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Years 1979
and 1980.

DECISION

In the Matter of the Petition

of

DONALD AND SANDRA BILICKI

:

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22
of the Tax Law for the Years 1979 and 1980.

In the Matter of the Petition

of

ROBERT AND ALICE BILICKI

for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1979 and 1980.

Petitioners, Robert W. Bilicki and Donald J. Bilicki d/b/a Bob's Rocky Point Service Station, 4 Mahogany Road, Rocky Point, New York 11778, 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 September 1, 1979 through February 28, 1981 (File No. 41112).

Petitioner, Bob's Rocky Point Service Station, Route 25A and Rocky Point, Rocky Point, New York 11778, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1979 and 1980 (File No. 49222).

Petitioners, Donald and Sandra Bilicki, Prince Road, Rocky Point, New York 11778, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1979 and 1980 (File No. 49223).

Petitioners, Robert and Alice Bilicki, 4 Mahogany Road, Rocky Point, New York 11778, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1979 and 1980 (File No. 49224).

On August 4, 1986, petitioners' representative, Peter R. Newman, Esq., executed a waiver of hearing and submitted their cases for decision based upon the existing record, together with briefs to be submitted by the parties on or before October 23, 1986. After due consideration, the State Tax Commission hereby renders the following decision.

ISSUE

Whether penalties asserted against petitioners should be reduced or abated.

FINDINGS OF FACT

1. Pursuant to a field audit of petitioner Bob's Rocky Point Service Station which commenced in October of 1981, the Audit Division issued the following:

a) Notice of Determination and Demand for Payment of Sales and Use Taxes Due (Notice No. S820319055F) to Robert W. Bilicki and Donald J. Bilicki d/b/a Bob's Rocky Point Service Station issued on March 19, 1982 in the amount of \$9,132.60, plus penalty and interest, for a total amount due of \$14,481.90 for the period December 1, 1978 through August 31, 1979;

b) Notice of Determination and Demand for Payment of Sales and Use Taxes Due (Notice No. S820910158C) to Robert W. Bilicki and Donald J. Bilicki d/b/a Bob's Rocky Point Service Station issued on September 10, 1982 in the amount of \$7,143.50, plus penalty and interest, for a total amount due of \$10,857.34 for the period September 1, 1979 through February 28, 1981;

c) Notice of Deficiency (Assessment No. A8310090131) to Bob's Rocky Point Service Station on October 5, 1983 for unincorporated business tax due for the years 1979 and 1980 in the amount of \$6,839.00, plus interest and penalty asserted pursuant to section 685(b) of the Tax Law for 1979 and penalties asserted pursuant to sections 685(a)(1), 685(a)(2) and 685(b) of the Tax Law for the year 1980, for a total amount due of \$10,118.58;

d) Notice of Deficiency (Assessment No. A8310090111) to Robert and Alice Bilicki on October 5, 1983 for personal income tax due for the years 1979 and 1980 in the amount of \$10,537.00, plus interest and penalties asserted pursuant to sections 685(a)(1), 685(a)(2) and 685(b) of the Tax Law, for a total amount due of \$19,652.13;

e) Notice of Deficiency (Assessment No. A8310090121) to Donald and Sandra Bilicki on October 5, 1983 for personal income tax due for the years 1979 and 1980 in the amount of \$10,034.00, plus interest and penalties asserted pursuant to sections 685(a)(1), 685(a)(2) and 685(b) of the Tax Law, for a total amount due of \$18,778.40.

2. As a result of a pre-hearing conference and additional information submitted by petitioners' representative, the Audit Division agreed to the following revisions:

a) Notices of determination and demands for payment of sales and use taxes due (Notice No. S820319055F issued March 19, 1982 and Notice No. S820910158C issued September 10, 1982) issued to Robert W. Bilicki and Donald J. Bilicki d/b/a Bob's Rocky Point Service Station revised to \$9,021.60, plus penalties and interest;

b) Notice of Deficiency for unincorporated business tax due (Assessment No. A8310090131) issued to Bob's Rocky Point Service Station on October 5, 1983 revised to \$3,383.00, plus penalties and interest;

c) Notice of Deficiency for personal income tax due (Assessment No. A8310090111) issued to Robert and Alice Bilicki on October 5, 1983 revised to \$2,952.00, plus penalties and interest;

d) Notice of Deficiency for personal income tax due (Assessment No. A8310090121) issued to Donald and Sandra Bilicki on October 5, 1983 revised to \$2,298.00, plus penalties and interest.

3. On August 4, 1986, petitioners' representative, Peter R. Newman, Esq., executed partial withdrawals of petition and discontinuances of case agreeing to the revisions as set forth in Finding of Fact "2", plus interest to be computed by the Audit Division. Therefore, the sole remaining issue herein is

whether penalties asserted against petitioners pursuant to the notices of determination and demands for payment of sales and use taxes due and notices of deficiency issued by the Audit Division should be reduced or abated.

4. Pursuant to the waiver of hearing executed by petitioners' representative on August 4, 1986, time was reserved for submission of petitioners' brief to be due on or before September 8, 1986. Petitioners neither submitted a brief on or before said date nor did petitioners or their representative ever request an extension for time to submit such brief.

CONCLUSIONS OF LAW

A. That, for the years at issue, the Tax Law imposed penalties for failure to file a tax return and for failure to pay or pay over tax shown on a return (Tax Law §§ 685[a][1], [2]; 1145[a][1]). In the case of an income tax deficiency, if such deficiency is due to negligence or intentional disregard of the provisions of Article 22 of the Tax Law or the rules and regulations promulgated thereunder, an additional penalty may be imposed (Tax Law § 685[b]).

B. That upon a determination by the Audit Division that such failure to file or pay was due to reasonable cause and not due to willful neglect, the aforesaid penalties shall not be imposed or, if imposed prior to such determination, shall be remitted by the Tax Commission.

C. That the record herein is completely devoid of any evidence upon which a determination can be made as to whether reasonable cause existed for petitioners' failure to file returns or pay or pay over personal income, unincorporated business or sales taxes. The penalties imposed upon petitioners by the Audit Division are, therefore, sustained.

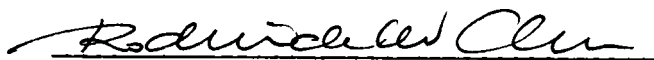
D. That the petitions of Robert W. Bilicki and Donald J. Bilicki d/b/a Bob's Rocky Point Service Station, Bob's Rocky Point Service Station, Donald

and Sandra Bilicki and Robert and Alice Bilicki are granted only to the extent indicated in Findings of Fact "2" and "3"; that the Audit Division is directed to modify the notices of determination and demands for payment of sales and use taxes due issued March 19, 1982 and September 10, 1982 and the notices of deficiency issued October 5, 1983 accordingly; and that, except as so granted, the petitions are in all other respects denied.


DATED: Albany, New York

STATE TAX COMYISSION

MAR 20 1987


PRESIDENT


COMMISSIONER


COMMISSIONER