

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ANTONIETTA RANDAZZO	:	DECISION
D/B/A ANNETTE'S TOP FLOOR FASHIONS	:	
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 March 1, 1980	:	
through November 30, 1982.	:	

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Petitioner, Antonietta Randazzo d/b/a Annette's Top Floor Fashions, 7023 20th Avenue, Brooklyn, New York 11204, 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 March 1, 1980 through November 30, 1982 (File No. 43336).

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 September 9, 1985 at 1:15 P.M., with all briefs to be submitted by October 10, 1985. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

#### ISSUE

Whether the Audit Division properly estimated the tax liability of petitioner for the period March 1, 1980 through November 30, 1982.

#### FINDINGS OF FACT

1. Petitioner, Antonietta Randazzo d/b/a Annette's Top Floor Fashions, sold women's clothing from her home located at 2070 74th Street, Brooklyn, New York. In April, 1982, petitioner opened a store known as "Body Talk Unisex". The store was closed and ceased operations on September 30, 1982.

2. Petitioner did not register with the Department of Taxation and Finance as a vendor for sales tax purposes until August 12, 1981.

3. On February 20, 1983, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period March 1, 1980 through November 30, 1982 for taxes due of \$22,312.50, plus penalty and interest of \$8,297.52, for a total of \$30,610.02.

4. The Audit Division attempted to conduct an audit of petitioner's business; however, no books and records were provided. In the absence of books and records, it was necessary for the Audit Division to estimate petitioner's sales. Petitioner had been audited by the Internal Revenue Service for the year 1980. The audit disclosed, through a cash availability analysis, that petitioner had unreported net income of \$16,910.00. Petitioner consented to the federal adjustment. The Audit Division used the gross profit percentage of 18.038 percent shown on an amended federal income tax return filed by petitioner to determine sales of \$93,746.00. This amount was combined with sales of \$13,582.00 reported on sales tax returns filed for the periods ending May 31, 1980, August 31, 1980 and November 30, 1980 to arrive at total estimated sales of \$107,328.00 for 1980. Based on the foregoing audit procedures, the Audit Division estimated additional taxable sales of \$25,000.00 for each quarterly period under audit which resulted in taxes due of \$22,312.50.

5. At the hearing, petitioner offered documents purporting to be sales invoices and purchase invoices for certain months during the audit period and a ledger for the store operation showing entries for sales on a daily basis. These documents were incomplete and inadequate for audit purposes.

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 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 petitioner failed to sustain its burden of showing that the method of audit or the amount of tax assessed was erroneous (Matter of Surface Line Operators Fraternal Organization, Inc. v. Tully, 85 A.D.2d 858).

C. That the petition of Antonietta Randazzo d/b/a Annette's Top Floor Fashions is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 20, 1983 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAR 11 1984

Rodolfo A. Chu  
PRESIDENT

Francis R. Koenig  
COMMISSIONER

Mark J. Tully  
COMMISSIONER