

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
	:	
of	:	
	:	
4 JAY'S SERVICENTER, INC. AND	:	
EMMA JEAN HUGHES ALEXANDER,	:	DECISION
INDIVIDUALLY AND AS OFFICER	:	
	:	
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, 1981	:	
through August 31, 1982.	:	

---

Petitioners, 4 Jay's Servicenter, Inc. and Emma Jean Hughes Alexander, individually and as officer, 119-22 225th Street, Cambria Heights, New York 11411, 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, 1981 through August 31, 1982 (File No. 43960).

A hearing was held before Jean Corigliano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 13, 1985 at 9:30 A.M. Petitioner appeared by Marvin E. Kramer, Esq. (Mark F. Fisherman, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUE

Whether 4 Jays Servicenter, Inc. performed automobile repairs rendering petitioners liable for additional tax due on repair sales.

#### FINDINGS OF FACT

1. On February 10, 1983, the Audit Division issued against Emma Jean Hughes Alexander, as officer of 4 Jay's Servicenter, Inc. (the "corporation"), a Notice of Determination and Demand for Payment of Sales and Use Taxes Due in the amount of \$91,523.75 plus penalty and statutory interest for the period

March 1, 1981 through August 31, 1982. On the same date, an identical notice was issued to the corporation.

2. The corporation operated a gasoline station at 111-06 Van Wyck Expressway, Ozone Park, New York. The gasoline station was managed by Mrs. Alexander's husband, Johnnie M. Alexander, who was primarily responsible for all aspects of the corporation's business operations.

3. On audit, the Audit Division requested that the corporation's books and records be made available to permit verification of its reported taxable sales. The only documents provided were sales tax returns and cancelled checks, a check register and monthly bank statements. Because these documents were deemed inadequate for audit purposes, the Audit Division resorted to external indices to determine taxable sales. Total taxable sales were divided into two categories, gasoline sales and repair sales. Using purchase records obtained from petitioner's gasoline supplier, EFCO Oil Corporation (EFCO), and selling prices derived from industry guidelines, the Audit Division determined total taxable gasoline sales for the audit period of \$893,318.00. The corporation reported taxable gasoline sales of \$41,375.00 but at the hearing conceded taxable gasoline sales as determined by the Audit Division.

4. The Audit Division estimated taxable repair sales on the basis of a visual inspection of the gas station, the geographic location of the station and knowledge of industry-wide practices. Standing on an island where gasoline is pumped, the auditor observed two service bays and a person performing mechanical work on an automobile located in one of the bays. The doors to the two bays were closed so that the auditor was unable to determine the condition of the bays and whether they contained hydraulic lifts, tools or repair parts. This inspection took place on June 15, 1982. Premised on these observations,

the Audit Division estimated the corporation's repair sales to be \$7,500.00 per bay per month resulting in total audited repair sales for the audit period of \$270,000.00.

5. The corporation did not perform repairs on automobiles during the audit period. When the gasoline station was first leased by EFCO to the corporation, the service bays were boarded up and inoperable. Upon the recommendation of EFCO, Mr. Alexander agreed to lease the service bays to a third party, and he formed a second corporation, Samco Sales Corporation ("Samco") for this purpose. The bays were repaired by EFCO, and a lease agreement was drawn whereby Samco agreed to lease the two service bays to James Medley for a period of two years beginning June 1, 1982. Mr. Medley began operating the service bays in June, 1982; however, he worked sporadically and after a few weeks stopped doing business altogether. The lease agreement was never signed by the parties.

6. Petitioner, Emma Jean Hughes Alexander, did not dispute her liability as an officer of the corporation.

#### CONCLUSION OF LAW

A. That petitioner failed to maintain the books and records required by Section 1135 of the Tax Law. Where, as here, an insufficiency of recordkeeping makes it virtually impossible to verify taxable sales receipts and conduct a complete audit, section 1138(a) of the Tax Law authorizes an estimate of tax due "on the basis of external indices." The audit method employed was reasonable under these circumstances (Matter of Chartair, Inc. v. State Tax Commission, 65 A.D.2d 44). However, petitioner has shown that the corporation did not perform repairs on automobiles during the audit period. Consequently, the Audit Division is directed to reduce the petitioner's additional taxable sales by

\$270,000.00 (Finding of Fact "4", supra) and recompute its tax liability accordingly.

B. That the petition of 4 Jay's Servicer, Inc. and Emma Jean Hughes Alexander is granted to the extent indicated in Conclusion of Law "A"; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, NY

STATE TAX COMMISSION

**JAN 28 1986**

Rodriguez Allen  
PRESIDENT

Francis R. Karmy  
COMMISSIONER

M. J. [Signature]  
COMMISSIONER