

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

DOGAN AYGOREN
PARTNER OF ROCKAWAY TEXACO SERVICE STATION

DECISION

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 May **31**, 1982.

Petitioner, Dogan Aygoren, partner of Rockaway Texaco Service Station, 2 Swan Court, Huntington, New York 11743, 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 May **31**, 1982 (File No. 45531).

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** July 24, 1985 at 9:15 A.M. and was continued to conclusion on October 8, 1985 at 9:15 A.M. Petitioner appeared by Friedland, Laifer & Robbins, Esqs. (Mark Laifer, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (William Fox, **Esq.**, of counsel).

ISSUES

I. Whether the Audit Division properly estimated petitioner's tax liability on the basis of external indices.

11. Whether the Audit Division properly assessed petitioner as a partner for periods after July, 1980.

FINDINGS OF FACT

1. Petitioner, Dogan Aygoren, partner of Rockaway Texaco Service Station, operated a gasoline station located at 98-21 Rockaway Boulevard, Ozone Park, New York. Ismet Kuruc was the other member of the partnership.

2. On June 16, 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 September 1, 1979 through May 31, 1982 for taxes due of \$69,560.72, plus penalty and interest of \$44,370.82, for a total of \$113,931.54.

3. On July 21, 1983, the Audit Division issued a Notice of Assessment Review which revised the taxes due on the above notice to \$57,193.12. The period September 1, 1979 through November 30, 1979 was deleted from the notice since an assessment for that period was barred by the statute of limitations.

4. The only records made available for audit were cancelled checks. Because of the incomplete records, the Audit Division contacted petitioner's supplier of gasoline, Leemilt's Petroleum, Inc., and obtained the total gallons of gasoline purchased and the amount paid for such purchases. The purchases were categorized into gallons by grade of gasoline (regular and no-lead) for each sales tax filing period. The gallonage was multiplied by the average statewide retail selling price (excluding the state gasoline tax and sales tax) to arrive at taxable sales of \$1,029,784.00. The sales tax due on that amount was \$82,382.72 as compared to sales tax paid of \$25,189.60, leaving additional taxes due of \$57,193.12.

5. The average retail selling price of gasoline for regular gas was taken from a District Office Audit Bureau memorandum which listed the statewide average by sales tax reporting quarters over a three year period. The memorandum

indicated that the selling prices were furnished by the Miscellaneous Tax Bureau and were based on surveys the Bureau had conducted in connection with fuel use tax laws. The auditor added \$.05 per gallon to the selling price of regular gas to estimate the selling price of no-lead gasoline.

6. The Audit Division determined that the business ceased operating as a partnership on November 30, 1980. Thereafter, Ismet Service Station, Inc. operated the station as Hillmi Service Station. Ismet Kuruc was the sole officer.

7. Petitioner argued that he severed his relationship with the partnership in July, 1980 and opened another gas station on Long Island. He alleged that his name was revoked as an authorized signatory on the partnership bank account sometime in August, 1980 and that a final tax return was prepared sometime in the fall of 1980. The evidence presented by petitioner did not establish the date on which the partnership was terminated.

8. Petitioner also took the position that his selling prices of gasoline were lower than the statewide averages used by the Audit Division. However, no credible evidence was adduced to establish the actual selling prices of gasoline.

CONCLUSIONS OF LAW

A. That section 1138(a) of the Tax Law provides that "if a return when filed is incorrect or insufficient, the amount of tax due shall be determined by the tax commission from such information as may be available" and authorizes, where necessary, an estimate of tax due "on the basis of external indices".

B. 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.

C. That petitioner provided inadequate and incomplete books and records for purposes of verifying taxable sales. Accordingly, the Audit Division's use of third party purchases and statewide average selling prices as a basis for determining petitioner's liability was proper pursuant to section 1138(a) of the Tax Law.

D. That the estimate procedures adopted by the Audit Division were reasonable under the circumstances and petitioner failed to sustain his 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. State Tax Commission, 85 A.D.2d 858).

E. That petitioner also failed to establish that he terminated his relationship with the partnership before November 30, 1980.

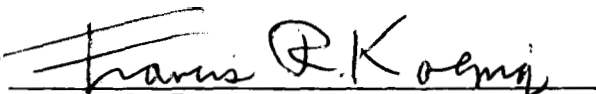
F. That the petition of Dogan Aygoren, partner of Rockaway Texaco Service Station, is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 16, 1983, as revised by the Notice of Assessment Review, is sustained.


DATED: Albany, New York

APR 21 1986

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

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