

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH DETORE
D/B/A VETS SERVICE CENTER

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 December 1, 1979
through May 31, 1982.

Petitioner, Joseph Detore, d/b/a Vets Service Center, 115 Vets Highway, Commack, New York 11725, 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 December 1, 1979 through May 31, 1982 (File No. 48549).

A hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 10, 1986 at 1:15 P.M. Petitioner appeared by Tobias J. Jacobs, CPA. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUE

Whether it was proper for the Audit Division to employ an indirect audit method in determining the assessment at issue herein.

FINDINGS OF FACT

1. On September 9, 1983, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Joseph Detore d/b/a Vets Service Center ("the vendor") for taxes due of \$45,774.00, plus penalty of \$11,103.81 and interest of \$13,415.81, for a total due of \$70,293.62. Said

notice resulted from an audit of the vendor's books and records for the period December 1, 1979 through May 31, 1982.

2. On March 17, 1983, Joseph Detore executed a consent form extending the period of limitation for assessment of sales and use tax for the period December 1, 1979 through May 31, 1980, to any time on or before September 20, 1983.

3. The vendor, an Amoco gasoline station, sold gasoline and oil and also engaged in automobile repairs.

4. The books and records of the vendor were inadequate. Sales and purchase figures were not available because the vendor failed to produce credit card amounts, which would have to be added to cash receipts to determine total sales, and to purchases by check to determine total purchases.

5. Based on the above, the audit results were determined by third-party verification of purchases of gasoline and oil. Such third-party verification consisted of computer printouts obtained from Amoco which listed Amoco's sales to the vendor during the period at issue.

6. Gasoline purchases from Amoco of \$1,108,381.00 were marked up 5.861726 percent. This was the weighted book markup of gasoline sold by the vendor on July 10, 1982. Adding said markup to the gasoline purchases yielded taxable gasoline sales for the period at issue of \$1,098,960.00, after removal of the State excise taxes of \$74,392.00.

7. Oil purchases from Amoco of \$6,710.40 were marked up 65 percent, based on office experience. Adding said markup to the oil purchases yielded taxable oil sales for the period at issue of \$11,072.16.

8. The vendor alleged that it did not engage in automobile repairs during the period at issue. However, it was determined by the auditor's personal observations that the vendor was engaged in repairing automobiles during the

period at issue. Furthermore, information received from the Tax Compliance Bureau in September 1981 confirmed that the vendor employed a mechanic.

9. The Audit Division determined that the vendor made taxable repair sales during the period at issue of \$156,000.00. Said amount was an estimate based on one mechanic working 40 hours per week at a repair shop that charges \$30.00 per hour for labor.

10. The total audited taxable sales were then reduced by the taxable sales reported, yielding additional taxable sales of \$646,855.00. The tax due on said amount was computed to be \$45,774.00.

11. The vendor contended that the third-party verification may have been inaccurate. However, he failed to provide any evidence to support such contention.

CONCLUSIONS OF LAW

A. That since the vendor failed to produce adequate records during the audit, it was proper for the Audit Division to employ an indirect audit method wherein it relied on third-party information received from Amoco, which detailed the vendor's purchases of gasoline and oil during the audit period.

B. That the vendor has failed to show where the audit method and/or results were erroneous or improper. Accordingly, the additional taxes assessed as the result of such audit are sustained.

C. That the petition of Joseph Detore d/b/a Vets Service Center is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 9, 1983 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

FEB 10 1987

Roderick W. Cline
PRESIDENT

Francis R. Koelzig
COMMISSIONER

[Signature]
COMMISSIONER