

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
INWOOD SERVICE STATION, INC. :
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 August 31, 1982. :

DECISION

In the Matter of the Petition :
of :
HARRY KARAKASHIAN, :
OFFICER OF INWOOD SERVICE STATION, INC. :
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 August 31, 1982. :

Petitioners, Inwood Service Station, Inc., 4469 Broadway, New York, New York 10040 and Harry Karakashian, Officer of Inwood Service Station, Inc., 55 Wainwright Avenue, Closter, New Jersey 07624, filed petitions 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 August 31, 1982 (File Nos. 48564 and 48751).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 28, 1986 at 1:15 P.M. and continued to conclusion before the same Hearing Officer at the same location on May 28, 1986 at 1:15 P.M. Petitioners appeared by Mario A. Procaccino, Esq. The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly determined additional sales taxes due from Inwood Service Station, Inc. based upon an examination of available books and records.

II. Whether a consent extending the period of limitation for assessment of sales and use taxes executed on behalf of a corporation also extends the statute of limitations for issuing an assessment against an officer of the corporation.

FINDINGS OF FACT

1. Petitioner Inwood Service Station, Inc. ("Inwood") operated a Shell gas station located at 4469 Broadway, New York, New York.

2. On September 20, 1983, as the result of a field examination, the Audit Division issued notices of determination and demands for payment of sales and use taxes due against petitioners Inwood Service Station, Inc. and Harry Karakashian, as officer. Said notices, which encompassed the period March 1, 1980 through August 31, 1982, assessed taxes due of \$62,210.26, plus penalty of \$14,194.59 and interest of \$16,963.44, for a total due of \$93,368.29. On June 5, 1984, the Audit Division advised petitioners that the tax due had been reduced from \$62,210.26 to \$59,933.30, plus penalty and interest.

3. The Audit Division obtained a consent from Inwood extending the period of limitation for assessment of sales and use taxes for the period March 1, 1980 through May 31, 1980 to September 20, 1983. The consent was executed by Harry Karakashian. Mr. Karakashian, while not contesting that he is a responsible officer of Inwood, asserts that the consent was valid only for the corporation and consequently the notice issued to him individually on

September 20, 1983 was not timely with respect to the period March 1, 1980 through May 31, 1980.

4. On audit, the Audit Division determined that Inwood maintained inadequate and incomplete books and records. Inwood did not have day sheets listing the number of gallons of gasoline sold or the selling price per gallon, complete purchase invoices, complete sales invoices or a record of parking receipts.

5. In order to verify the accuracy of reported taxable sales, the Audit Division obtained information from Shell Oil Company regarding the gallons of gasoline purchased by petitioner and the average retail selling price of said gasoline. Based on the information submitted by Shell Oil Company, the Audit Division computed markups for each grade of gasoline sold and applied said markups to Inwood's purchases of gasoline. For the period March 1, 1980 through February 28, 1982, the Audit Division computed adjusted gasoline sales of \$788,289.03. Due to petitioner's lack of purchase invoices and sales invoices, the Audit Division employed estimated markups of 100% for motor oil and grease and 60% for tires. Repair sales were estimated at \$10,000.00 per quarter. Audited taxable sales for the period March 1, 1980 through February 28, 1982 totaled \$921,178.45, and when compared to reported taxable sales of \$374,268.00, resulted in an error factor of 146.13%. The error factor of 146.13% was applied to reported taxable sales for the audit period and produced additional taxable sales of \$716,996.00. Finally, the Audit Division, due to Inwood's failure to keep a record of parking receipts, estimated parking receipts of \$3,000.00 per quarter.

6. At the hearing held herein, petitioner argued that the estimates of \$10,000.00 per quarter for repair sales and \$3,000.00 per quarter for parking

receipts were excessive. No credible documentary or other evidence was presented by petitioner to refute the estimates used by the Audit Division.

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 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 for repair sales and parking receipts were reasonable under the circumstances. When a taxpayer's recordkeeping is faulty, exactness is not required of the examiner's audit (Matter of Meyer v. State Tax Commission, 61 AD2d 223). 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. State Tax Commission, 85 AD2d 858).

E. That section 1147(c) of the Tax Law provides that prior to the expiration of the period for the assessment of additional tax, a taxpayer may consent in writing to an extension of the period within which additional tax

due may be determined. Such consent by a corporation extends the liability of its corporate officers required to collect tax under sections 1131(1) and 1133(a) of the Tax Law for the period consented to by the corporation. Therefore, since Inwood signed a consent to an extension, the liability of Harry Karakashian was extended for the same period (Matter of Jack Galione, State Tax Commission, October 6, 1982).


F. That the petitions of Inwood Service Station, Inc. and Harry Karakashian as officer of Inwood are denied and the notices of determination and demands for payment of sales and use taxes due, as modified by the Audit Division in the notices of assessment review dated June 5, 1984, are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

NOV 12 1986


PRESIDENT


COMMISSIONER


COMMISSIONER