

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

EASY DOES IT SHOPS, INC.
AND MICHAEL BAGDAN, AS OFFICER

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 March 1, 1981
through February 29, 1984.

Petitioners, Easy Does It Shops, Inc. and Michael Bagdan, as officer, 14 Half Mile Road, Armonk, New York 10504, 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 February 29, 1984 (File Nos. 53714 and 53715).

On October 22, 1986, petitioners waived their right to a hearing and requested that a decision be rendered based on the entire record contained in its file. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether penalty and interest exceeding the minimum asserted against petitioners should be abated.

FINDINGS OF FACT

1. Petitioner, Easy Does It Shops, Inc. (the "corporation"), operated a retail lumber and hardware store during the period March 1, 1981 through February 29, 1984. Petitioner, Michael Bagdan, was an officer of Easy Does It Shops, Inc. throughout this period.

2. The Audit Division issued the following notices of determination and demands for payment of sales and use taxes due against the corporation:

<u>Date Issued</u>	<u>Period</u>	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>
April 4, 1984	3/1/81-2/29/84	\$82,690.51	\$9,879.53	\$7,185.42
October 10, 1984	3/1/81-2/29/84	16,539.45	4,134.87	5,434.63

3. The Audit Division issued the following notices of determination and demands for payment of sales and use taxes due against Mr. Bagdan:

<u>Date Issued</u>	<u>Period</u>	<u>Tax</u>	<u>Penalty</u>	<u>Interest</u>
April 4, 1984	6/1/77-5/31/83	\$32,114.29	\$5,944.11	\$ 8,586.21
April 4, 1984	6/1/83-2/29/84	50,576.22	3,935.42	1,681.78
October 10, 1984	3/1/81-2/29/84	16,539.45	4,134.87	5,434.63

4. Following the issuance of the assessments, the audit was reviewed and total additional tax due asserted against petitioners for the period March 1, 1981 through February 29, 1984 was revised to \$52,600.72 plus penalty and interest.

5. On October 22, 1986, Mr. Bagdan executed a partial withdrawal of petition agreeing to a recomputed sales and use tax liability of \$49,420.06, but contesting the imposition of penalties and interest above the minimum.

6. Mr. Bagdan managed the business affairs of the corporation from 1961 until its sale in 1984. Beginning in 1977, a series of family illnesses and related problems diverted Mr. Bagdan's attention away from the daily operations of the corporation and caused him to be physically absent from his place of business for long periods of time.

7. In 1972, it was discovered that Mr. Bagdan's five year old son had certain learning disabilities which required private schooling and psychological counseling. In 1977, this son was sent to a school in Greenwich, Connecticut and began to be provided with psychiatric care.

8. In 1979, Mr. Bagdan's wife gave birth to the Bagdans' third child. Two weeks later, she underwent surgery at Lenox Hill Hospital, and at that time, she was diagnosed as having Hodgkins Disease. Mrs. Bagdan underwent two months of radiation therapy at Memorial Sloan Kettering Hospital in New York City followed by a year of chemotherapy. Mr. Bagdan was forced to devote an increasing amount of time to the care of his wife and three children and was frequently absent from his business.

9. In June 1982, Mr. Bagdan suffered a heart attack which prevented him from taking any part in his business for a period of seven months.

10. During the period of his and his wife's ill health, Mr. Bagdan entrusted his accountant and bookkeeper with maintaining all records of sales and complying with the New York State Tax Law. It was not until the audit by the Audit Division was under way that he became fully aware that the business was deteriorating because of his absences. Mr. Bagdan sold his home and business in 1984.

CONCLUSIONS OF LAW

A. That penalties and interest exceeding the statutory minimum may be waived by the State Tax Commission if the petitioner establishes that the failure to comply with the Tax Law was due to reasonable cause and not to willful neglect (Tax Law § 1145[a]). Grounds for reasonable cause may include "serious illness of the taxpayer, a responsible officer or employee of the taxpayer, or his unavoidable absence from his usual place of business" (20 NYCRR 536.5[b][1]).

B. That petitioner has shown that the serious illness first of his wife and later of himself caused extended absences from his place of business leading to the deficiencies disclosed by the audit. Such absences constituted reasonable cause for petitioner's failure to comply with the Tax Law and


provide sufficient grounds for abatement of penalties and interest above the minimum.

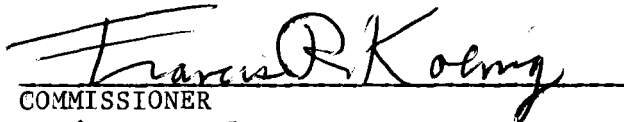
C. That the petition of Easy Does It Shops, Inc. and Michael Bagdan is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division will modify the notices of determination and demands for payment of use taxes due accordingly; and that, in all other respects, the petition is denied.

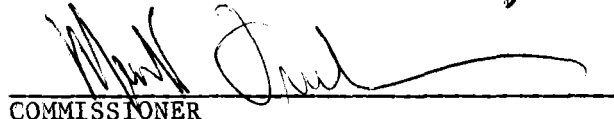
DATED: Albany, New York

STATE TAX COMMISSION

FEB 24 1987


PRESIDENT


COMMISSIONER


COMMISSIONER