

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

ANTHONY ALFANO SERVICE STATION, INC.

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, 1982 :
through May 31, 1982.

Petitioner, Anthony Alfano Service Station, Inc., Marcus Avenue and Jericho Turnpike, Garden City Park, New York 11040, 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, 1982 through May 31, 1982 (File No. 54958).

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 October 24, 1986 at 9:00 A.M. Petitioner appeared by Jerome Eisen, CPA. The Audit Division appeared by John P. Dugan, Esq. (Gary Palmer, Esq., of counsel).

ISSUE

Whether reasonable cause existed for petitioner's late filing of the March 1982 estimated New York State and Local Sales and Use Tax Return.

FINDINGS OF FACT

1. Petitioner, Anthony Alfano Service Station, Inc. filed and paid its Part-Quarterly New York State & Local Sales & Use Tax Return (ST-809) for March 1982 on April 20, 1982.

2. On September 24, 1982, the Tax Compliance Bureau issued a Notice and Remand for Payment of Sales and Use Taxes Due to petitioner for penalty of

\$367.28 and interest of \$84.25, for a total amount due of \$451.53. Said notice indicated that the penalty and interest was due for not filing the March 1982 estimated return which was due **on** March 20, 1982.

3. Petitioner timely filed a petition for revision of the assessment. Petitioner subsequently paid the notice and is now seeking a refund of \$451.53.

4. Petitioner is a monthly filer of sales tax returns and has a prior history of timely filing such returns. The due date for monthly returns is the 20th day of the following month. Petitioner's accountant filed the part-quarterly return for March 1982 **on** April 20, 1982; however, he was **not** aware that an estimated return for March 1982 was required to be filed by March 20, 1982.

CONCLUSIONS OF LAW

A. That petitioner was required to file an estimated return for March 1982 **on** or before March 20, 1982 **in** accordance with section 1137-A(b) of the Tax Law.

B. That section 1145(a)(1)(i) of the Tax Law provides for the imposition of penalty and interest for failure to file a return or pay over any tax when due. Subdivision (ii) of said section provides for the remission of penalty and that portion of interest that exceeds the minimum rate if the Tax Commission determines that the failure or delay was due to reasonable cause and not due to willful neglect.

C. That 20 NYCRR 536.5(b) (formerly 536.2[b]) provides:

"Reasonable Cause. In determining whether reasonable cause exists, either as a basis for remitting assessed interest or penalties or as grounds for remitting interest or penalties upon the late filing of a return or payment, the taxpayer's previous compliance record may be taken into account. Reasonable cause for failure to file a return on time must be affirmatively shown by the taxpayer in a written statement. Grounds **for** reasonable cause, where clearly established, may include the following:

* * *

(6) any other cause for delinquency which appears to a person of ordinary prudence and intelligence as a reasonable cause for delay in filing a return and which clearly indicates an absence of gross negligence or willful intent to disobey the taxing statutes. Past performance will be taken into account. Ignorance of the law, however, will not be considered reasonable cause."

D. That petitioner relied on the professional expertise of its accountant and given its past exemplary filing record, petitioner established that the late filing was due to reasonable cause and not willful neglect. Accordingly, the penalty is cancelled and interest shall be reduced to the minimum rate.

E. That the petition of Anthony Alfano Service Station, Inc. is granted; the Audit Division is hereby directed to calculate the applicable interest due on the late payment and issue a refund to petitioner for the balance.

DATED: Albany, New York

STATE TAX COMMISSION

APR 06 1987


PRESIDENT


COMMISSIONER


COMMISSIONER