

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

March 18, 1983

Automotive Center of 31-65, Inc.
c/o Demetrios Diolitsis
22-20 21st Street
Astoria, NY 11105

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
AUTOMOTIVE CENTER OF 31-65, 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, 1976	:	
through February 28, 1979.	:	

Petitioner, Automotive Center of 31-65, Inc., c/o Demetrios Diolitsis, 22-20 21st Street, Astoria, New York 11105, 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, 1976 through February 28, 1979 (File No. 28835).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 14, 1982 at 9:00 A.M. Petitioner appeared by Demetrios Diolitsis and Ilias Stamatelatos, officers. The Audit Division appeared by Paul B. Coburn, Esq. (Lawrence Newman, Esq., of counsel).

ISSUE

Whether the Audit Division correctly determined the amounts of sales tax liability for the period March 1, 1976 through February 28, 1979.

FINDINGS OF FACT

1. On May 4, 1979, Ilias Stamatelatos, as Secretary-Treasurer of Automotive Center of 31-65, Inc. ("Automotive"), signed a consent extending period of limitation for assessment of sales and use taxes under Articles 28 and 29 of the Tax Law providing that the amount of sales and use taxes due for the

periods March, 1976 through February, 1979 could be determined at any time on or before December 20, 1979.

2. On November 2, 1979, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Automotive for the period March 1, 1976 through February 28, 1979 in the amount of \$34,190.88, plus penalty of \$7,315.50 and interest of \$7,649.36, for a total of \$49,155.74. This was determined to be due in accordance with section 1138 of the Tax Law and was based on an audit of records. Similar notices for the same amounts were issued on said date to Ilias Stamatelatos and Demetrios Diolitsis, as officers personally liable under sections 1131(1) and 1133 of the Tax Law for taxes determined to be due in accordance with section 1138 of the Tax Law.

3. Upon audit it was found that petitioner had inadequate books and records. There were no ledgers. The accountant's workpapers, which had been the source of information for federal returns, were made available. Sales for the audit period were calculated from the federal tax returns. Purchases were also summarized from the accountant's workpapers. It was noted that the reported purchases consisted of gasoline purchases paid by check only. Omitted were credit card purchases which appeared on the gas supplier's statements. It was found that recorded gas purchases for the periods amounted to \$293,626.00; unrecorded gasoline purchases were \$132,132.00. The total purchases of \$425,758.00 approximated the computed gross sales of \$424,589.00. The auditor concluded that sales were grossly understated. Similarly, auto parts and repairs were found to be underreported and understated. Petitioner's accountant inadvertently gave the auditor a few purchase invoices for auto parts. Verification with two of the suppliers situated within the locality revealed extensive purchases which were utilized in the calculations (Retail Auto Supplies \$12,777.22 and

System Auto Parts \$43,796.00, a total of \$56,573.22). A test period of March and June, 1978 was used because it was the only period found by the auditor with complete day sheets which listed the daily endeavors of the company.

The overall gasoline markup ratio of 7.88 percent and excise tax ratio to cost of 12.8 percent were applied. These percentages were then applied to the computed gasoline purchases of \$425,758.00. A 125 percent markup on the unrecorded parts purchases was used; this was to allow for labor on auto repair activities. These additional taxable sales were calculated as follows:

Audited gas purchases	\$425,758.00	
Less: excise tax of 12.8%	<u>54,497.00</u>	
	\$371,261.00	
Markup 7.88%	<u>29,255.00</u>	
Taxable gasoline sales		\$400,516.00
Taxable repair sales (parts & labor)		
audited parts purchases	\$ 56,573.00	
125% markup (to include labor)	<u>70,716.00</u>	
Total taxable repair sales		127,289.00
Audited taxable sales		\$527,805.00
Taxable sales reported		<u>100,419.00</u>
Additional taxable sales		\$427,386.00
Tax at 8%		\$ 34,190.88

4. Petitioner maintained that due to its location being "off the main beat", it charged only for the actual cost of parts and not the list price, that labor costs were absorbed and that customers used their tax numbers to purchase items for their own use. It was also maintained by petitioner that due to its location in a high crime area, gasoline, parts and tools were constantly stolen.

5. That Demetrios Diolitsis was president and Ilias Stamatelatos was secretary-treasurer of Automotive is not at issue.

CONCLUSIONS OF LAW

A. That evidence presented by the Audit Division showed that with the exception of the March and June day sheets and the few vouchers referred to in

Finding of Fact No. 3, petitioner produced no books or records and that the workpapers available were totally inadequate and incomplete and did not provide a reliable basis for determination of the tax due for the period under review. The auditor utilized the day sheets and the federal returns to the extent possible and applied the error rate derived from detailed audit of the periods. This is within the mandate of section 1138 of the Tax Law which provides that:

"(a) If a return required by this article is not filed, or 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."

The Audit Division properly determined the amount of sales tax liability of petitioner for the period under review.


B. That Demetrios Diolitsis and Ilias Stamatelatos were officers of Automotive Center of 31-65, Inc. during the periods in issue. They were persons required to collect the tax within the meaning of section 1131(1) of the Tax Law and were personally liable for the tax under section 1133(a) of the Tax Law. Their assessment by the Audit Division was proper.

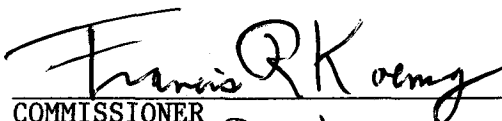
C. That the petition of Automotive Center of 31-65, Inc. is denied and the notices issued November 2, 1979 are sustained.

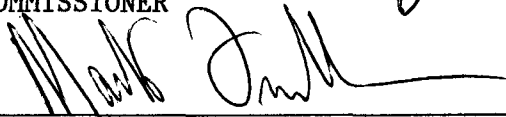
DATED: Albany, New York

STATE TAX COMMISSION

MAR 18 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Automotive Center of 31-65, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 3/1/76-2/28/79. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 18th day of March, 1983, he served the within notice of Decision by certified mail upon Automotive Center of 31-65, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Automotive Center of 31-65, Inc.
c/o Demetrios Diolitsis
22-20 21st Street
Astoria, NY 11105

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
18th day of March, 1983.

David Parchuck

James A. Fitzgerald
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

P 389 758 717
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>Automotive Center of</u>	
<u>31-65 Insemetrios Dopolitis</u>	
Street and No.	
<u>22-20 21st Street</u>	
P.O., State and ZIP Code	
<u>Astoria, NY 11105</u>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982