

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Samnat Enterprises, Inc.
and Joseph Glanzberg, Individ. & as Officer : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 12/1/77-2/28/81. :

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 28th day of June, 1985, he served the within notice of decision by certified mail upon Samnat Enterprises, Inc., and Joseph Glanzberg, Individ. & as Officer the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Samnat Enterprises, Inc.
and Joseph Glanzberg, Individ. & as Officer
19 Daell Lane
Centereach, NY 11720

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
28th day of June, 1985.

David Parchuck

James A. Haggard
Authorized to administer oaths
pursuant to Tax Law section 174

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

June 28, 1985

Samnat Enterprises, Inc.
and Joseph Glanzberg, Individ. & as Officer
19 Daell Lane
Centereach, NY 11720

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SAMNAT ENTERPRISES, INC.	:	DECISION
AND JOSEPH GLANZBERG,	:	
INDIVIDUALLY AND AS OFFICER	:	
	:	
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, 1977	:	
through February 28, 1981.	:	

Petitioners, Samnat Enterprises, Inc. and Joseph Glanzberg, individually and as officer, 19 Daell Lane, Centereach, New York 11720, 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, 1977 through February 28, 1981 (File No. 35831).

A formal 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 September 10, 1984 at 1:15 P.M., with all briefs to be submitted by December 31, 1984. Petitioner Samnat Enterprises, Inc. appeared by its President, Joseph Glanzberg. Petitioner Joseph Glanzberg appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly estimated the tax liability of petitioner Samnat Enterprises, Inc. on the basis of external indices.

II. Whether petitioner Joseph Glanzberg was personally liable for the taxes due from Samnat Enterprises, Inc.

FINDINGS OF FACT

1. On November 23, 1980, petitioner Samnat Enterprises, Inc. ("Samnat") was observed making sales of leather coats and hats at a flea market at Roosevelt Raceway in Nassau County. The Audit Division's record of the field visit to the flea market indicated the following information: one sale of approximately \$55.00 was observed in a fifteen minute period; the sales price of the coats ranged from \$50.00 to \$100.00 and hats sold for \$5.00; inventory consisted of approximately 100 coats and two cartons of hats; the rent paid was \$25.00 per location; petitioner had a double location inside and one outside location.

2. The Audit Division reviewed its files and found that Samnat filed sales tax returns for the quarterly periods ending May 31, 1978, August 31, 1978 and November 30, 1978 and reported no sales. Sales tax returns were not filed for any other periods.

The Audit Division contacted Samnat to conduct an audit; however, Samnat never produced any books and records.

3. Since Samnat failed to produce books and records for audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Samnat on June 29, 1981 covering the period December 1, 1977 through February 28, 1981 for taxes due of \$56,160.00, plus penalty and interest of \$23,112.00, for a total of \$79,272.00.

On the same date, an identical notice was issued to Joseph Glanzberg, individually and as officer of Samnat.

4. The taxes due on the above notices were estimated based on sales of \$60,000.00 per quarter. These sales were computed as follows:

rent per location	\$ 25.00
x 6 locations (1 double inside and 1 outside on Saturday and Sunday)	x 6
total rent paid per week	\$ 150.00
x 13 weeks per quarter	x 13
total rent paid per quarter	\$ 2,000.00
x 30 (sales compared to rent expense are 30 times rent paid. Data obtained from Dun and Bradstreet publication "Cost of Doing Business")	x 30
	\$60,000.00

5. Subsequent to the issuance of the notices, Samnat produced a check stub register which indicated that Samnat also paid rent for space at flea markets located at Aqueduct Racetrack, Belmont Racetrack, Empire State Fleamarket in Portchester and Canarsie Flea Market in Brooklyn.

6. The Audit Division issued notices of assessment review which adjusted the taxes due to \$50,400.00. Samnat did not commence business until April 1, 1978. Consequently, estimated sales for the period ending February 28, 1978 and for March, 1978 were deleted.

7. At the hearing, the Audit Division conceded that the taxes due should be reduced to \$30,333.32 based on adjusting the estimated sales using a factor of 20 times the rent paid.

8. Samnat argued that the taxes determined due by the Audit Division were excessive for the following reasons:

- a) the business was not operated during June, July and August;
- b) the rent paid was \$17.00 rather than \$25.00 and it never operated an inside and outside location at the same time;
- c) the observation by the Audit Division was in November when sales are higher than normal because of Christmas.

Samnat offered no evidence to support the foregoing arguments.

Petitioner Joseph Glanzberg also produced no evidence with respect to his personal liability as an officer. Mr. Glanzberg operated the day-to-day

business operations of Samnat. Petitioners were given until October 30, 1984 and extended upon request to November 30, 1984 to submit any evidence to substantiate their positions. No such evidence was submitted.

CONCLUSIONS OF LAW

A. 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.

Petitioner Samnat failed to maintain books and records as required by section 1135(a) of the Tax Law. Accordingly, the Audit Division properly estimated the taxes due on the basis of external indices pursuant to section 1138(a) of the Tax Law.

B. That the estimate procedures adopted by the Audit Division were reasonable under the circumstances and Samnat failed to sustain its burden to demonstrate by clear and convincing evidence 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 A.D.2d 858).


C. That petitioner Joseph Glanzberg was a person required to collect tax within the meaning and intent of section 1131(1) of the Tax Law and, therefore, is personally liable for the taxes due from Samnat in accordance with section 1133(a) of the Tax Law.

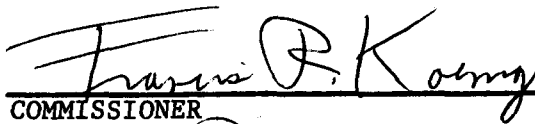
D. That the petition of Samnat Enterprises, Inc. and Joseph Glanzberg, individually and as officer is denied and the notices of determination and demand for payment of sales and use taxes due issued June 20, 1981 are sustained.


DATED: Albany, New York

JUN 28 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

P 693 169 968

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to	<i>James Robertson Inc.</i>	
Street and No.	<i>2 Joseph Hengberg Inds</i>	
P.O. State and ZIP Code	<i>19 Bell Ave</i>	
Postage	<i>Centerack NY 11720</i>	\$ <i>11.72</i>
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		