

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Dogan Aygoren : AFFIDAVIT OF MAILING
Partner of Rockaway Texaco Service Station

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article(s) 28 & 29 of the Tax Law :
for the Period 9/1/79-5/31/82.

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 21st day of April, 1986, he/she served the within notice of decision by certified mail upon Dogan Aygoren, Partner of Rockaway Texaco Service Station the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dogan Aygoren
Partner of Rockaway Texaco Service Station
2 Swan Court
Huntington, NY 11743

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
21st day of April, 1986.

David Parchuck

Janet M. Snay
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of

Dogan Aygoren :
Partner of Rockaway Texaco Service Station

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax
under Article(s) 28 & 29 of the Tax Law :
for the Period 9/1/79-5/31/82.

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 21st day of April, 1986, he served the within notice of decision by certified mail upon Mark S. Laifer, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mark S. Laifer
Friedland, Laifer & Robbins
233 Broadway Suite 970
New York, NY 10279

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
21st day of April, 1986.

David Parchuck

Janet M. Snay
Authorized to administer oaths
pursuant to Tax Law section 174

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

April 21, 1986

Dogan Aygoren
Partner of Rockaway Texaco Service Station
2 Swan Court
Huntington, NY 11743

Dear Mr. Aygoren:

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Mark S. Laifer
Friedland, Laifer & Robbins
233 Broadway Suite 970
New York, NY 10279

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DOGAN AYGOREN	:	DECISION
PARTNER OF ROCKAWAY TEXACO SERVICE STATION	:	
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 September 1, 1979	:	
through May 31, 1982.	:	

Petitioner, Dogan Aygoren, partner of Rockaway Texaco Service Station, 2 Swan Court, Huntington, New York 11743, 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 September 1, 1979 through May 31, 1982 (File No. 45531).

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 July 24, 1985 at 9:15 A.M. and was continued to conclusion on October 8, 1985 at 9:15 A.M. Petitioner appeared by Friedland, Laifer & Robbins, Esqs. (Mark Laifer, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUES

- I. Whether the Audit Division properly estimated petitioner's tax liability on the basis of external indices.
- II. Whether the Audit Division properly assessed petitioner as a partner for periods after July, 1980.

FINDINGS OF FACT

1. Petitioner, Dogan Aygoren, partner of Rockaway Texaco Service Station, operated a gasoline station located at 98-21 Rockaway Boulevard, Ozone Park, New York. Ismet Kuruc was the other member of the partnership.

2. On June 16, 1983, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period September 1, 1979 through May 31, 1982 for taxes due of \$69,560.72, plus penalty and interest of \$44,370.82, for a total of \$113,931.54.

3. On July 21, 1983, the Audit Division issued a Notice of Assessment Review which revised the taxes due on the above notice to \$57,193.12. The period September 1, 1979 through November 30, 1979 was deleted from the notice since an assessment for that period was barred by the statute of limitations.

4. The only records made available for audit were cancelled checks. Because of the incomplete records, the Audit Division contacted petitioner's supplier of gasoline, Leemilt's Petroleum, Inc., and obtained the total gallons of gasoline purchased and the amount paid for such purchases. The purchases were categorized into gallons by grade of gasoline (regular and no-lead) for each sales tax filing period. The gallonage was multiplied by the average statewide retail selling price (excluding the state gasoline tax and sales tax) to arrive at taxable sales of \$1,029,784.00. The sales tax due on that amount was \$82,382.72 as compared to sales tax paid of \$25,189.60, leaving additional taxes due of \$57,193.12.

5. The average retail selling price of gasoline for regular gas was taken from a District Office Audit Bureau memorandum which listed the statewide average by sales tax reporting quarters over a three year period. The memorandum

indicated that the selling prices were furnished by the Miscellaneous Tax Bureau and were based on surveys the Bureau had conducted in connection with fuel use tax laws. The auditor added \$.05 per gallon to the selling price of regular gas to estimate the selling price of no-lead gasoline.

6. The Audit Division determined that the business ceased operating as a partnership on November 30, 1980. Thereafter, Ismet Service Station, Inc. operated the station as Hillmi Service Station. Ismet Kuruc was the sole officer.

7. Petitioner argued that he severed his relationship with the partnership in July, 1980 and opened another gas station on Long Island. He alleged that his name was revoked as an authorized signatory on the partnership bank account sometime in August, 1980 and that a final tax return was prepared sometime in the fall of 1980. The evidence presented by petitioner did not establish the date on which the partnership was terminated.

8. Petitioner also took the position that his selling prices of gasoline were lower than the statewide averages used by the Audit Division. However, no credible evidence was adduced to establish the actual selling prices of gasoline.

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 statewide 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 were reasonable under the circumstances and petitioner failed to sustain his 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 A.D.2d 858).

E. That petitioner also failed to establish that he terminated his relationship with the partnership before November 30, 1980.

F. That the petition of Dogan Aygoren, partner of Rockaway Texaco Service Station, is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 16, 1983, as revised by the Notice of Assessment Review, is sustained.

DATED: Albany, New York

APR 21 1986

STATE TAX COMMISSION

Roderich W. Allen
PRESIDENT

Francis P. Koenig
COMMISSIONER

Mark J. Jones
COMMISSIONER

P 319 373 649

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

★ U.S.G.P.O. 1985-480-794

Sent to Mark S. Laifer	
Street and No Friedland Laifer + Robbins	
233 Broadway Suite 970	
P.O., State and ZIP Code New York, N.Y. 10279	
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, June 1985

P 319 373 648

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED
NOT FOR INTERNATIONAL MAIL
(See Reverse)

★ U.S.G.P.O. 1985-480-794

Sent to Dogan Aygoren	
Street and No Partner of Rockaway Texaco	
Service Station	
P.O., State and ZIP Code 2 Swan Court	
Huntington, N.Y. 11743	
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, June 1985