STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
INTERCONTINENTAL AUDIO & VIDEO, INC.	:	DECISION DTA No. 807037
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, 1985.	:	

Petitioner Intercontinental Audio & Video, Inc., 41-51 Main Street, Flushing, New York 11355, and the Division of Taxation each filed an exception to the determination of the Administrative Law Judge issued on December 8, 1994. Petitioner appeared by Schupbach, Williams & Pavone, Esqs. (Paul R. Williams, Esq., of counsel). The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Michael B. Infantino, Esq., of counsel).

Petitioner filed a brief in support of its exception and in opposition to the Division of Taxation's exception and a reply to the Division of Taxation's brief in opposition. The Division of Taxation filed a brief in support of its exception and in opposition to petitioner's exception and a reply to petitioner's brief in opposition which was received on July 10, 1995 and began the six-month period for issuance of this decision. The Division of Taxation's request for oral argument was denied.

Commissioner Koenig delivered the decision of the Tax Appeals Tribunal. Commissioners Dugan and DeWitt concur.

ISSUE

Whether petitioner has established that certain sales treated upon audit as subject to tax were, in fact, nontaxable as sales for resale (wholesale sales) and whether petitioner has established sufficient basis to warrant abatement of penalty imposed.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

Petitioner, Intercontinental Audio & Video, Inc., was during the period in question engaged in the business of importing and selling consumer electronic audio and video equipment and accessories within the New York metropolitan area. Petitioner's business operations included retail salesof consumer electronic equipment as well as video tape rentals and associated video tape rental club membership sales. In addition, petitioner was engaged in wholesale selling (sales for resale) of its consumer electronic equipment. The types of merchandise carried by petitioner included small appliances such as fans, radios, small televisions, Sony "Walkman" players, etc.

At the commencement of the audit, the Division of Taxation's ("Division") auditor requested that petitioner produce its records for audit review. Petitioner does not dispute the adequacy of the Division's request for records, or the fact that there were no cash register tapes, bank deposit slips, purchases journal, sales journal, or invoices for the video tape rental and video tape rental club memberships available. However, petitioner did have merchandise sales invoices available for review, including invoices pertaining to its claimed nontaxable sales. It is noted in this regard that such invoices were not prenumbered.

Petitioner's method of accounting for sales receipts and preparing and filing its sales tax returns was based on its deposits to two bank accounts. One account (a Bank of Baroda account in Manhattan) was used primarily for the resale and wholesale portion of petitioner's business, while the other (an account with a branch office of Manufacturers Hanover located near petitioner's Queens, New York premises) was used for the retail portion of petitioner's

business.[1]

As described, petitioner's sales per its books and its sales tax returns were based on petitioner's bank deposits. The auditor noted (and petitioner did not dispute) that approximately 25% of petitioner's cash receipts were not deposited in the bank, but rather were kept on hand to pay expenses. As a result, such amounts not deposited in petitioner's bank account(s) were not reported on petitioner's sales tax returns. Such unreported cash receipts were derived mainly from video tape rentals and from sales of video tape rental club memberships. In addition, petitioner operated on a net credit card receipt basis (i.e., reimbursement by the credit card company less expenses for credit card handling) such that the handling expense deducted in netting petitioner's credit card receipts was also not deposited in petitioner's bank account(s) or reported on its sales tax returns. Petitioner does not dispute the proper taxability of such receipts and, as described infra, petitioner agreed to pay the tax due on such unreported amounts ($8,662.44 on video tape rentals and memberships and $1,093.47 on credit card handling fees).

The auditor also reviewed and disallowed a total of $19,938.49 of petitioner's claimed nontaxable out-of-country sales. This disallowance was based on the fact that said items were picked up in New York State (more specifically, delivered to a recipient at an airport as opposed to delivered out of the United States), and tax due thereon totalled $1,644.92. In addition, the auditor's review of petitioner's fixed asset acquisitions revealed the acquisition of $7,487.83 worth of fixed assets with no proof of tax paid thereon, resulting in a use tax liability of $617.74. In sum, the auditor calculated tax due in the aggregate amount of $12,018.57 on video tape rental club memberships, video tape rentals, out-of-country sales disallowed and fixed asset acquisitions. Petitioner chose to apply for and was granted amnesty with respect to those sales tax quarterly periods eligible for amnesty (the sales tax quarterly periods spanning March

[1]Petitioner's owner and founder testified that the Manufacturers Hanover account, which was used for retail sales receipts, was occasionally also used for the deposit of resale or wholesale receipts. However, in such instances a check was thereafter drawn to allow transfer of such deposit amounts over to petitioner's resale/wholesale bank account. Petitioner explained this practice was followed due to petitioner's owner's unwillingness to carry large sums of cash via subway from petitioner's location in Queens, New York to its resale/wholesale bank in Manhattan.

1982 through November 1984).[2] Accordingly, petitioner paid $7,286.88 under amnesty, thus leaving a balance of $4,731.69 as unpaid (since not eligible for amnesty) but not challenged and admitted as due.

As to its gross sales of merchandise, petitioner agreed with the auditor's selection of a test period review covering the months of June, July and August of 1982 and June of 1983. In turn, gross sales as reported by petitioner were not challenged by the auditor except for the unreported cash amounts relating to video tape rentals, rental club memberships and credit card netting amounts, as described above. In addition to the foregoing, the auditor reviewed petitioner's claimed nontaxable sales (i.e., sales for resale, sales to exempt organizations and sales to diplomatic personnel). This review resulted in a finding that $77,931.00 in receipts for items allegedly sold to exempt organizations and diplomats were denied exempt status for lack of properly completed exemption certificates. Furthermore, sales totalling $723,010.00 made to two businesses located in Massachusetts (T. Sack Company, Inc. - Electronic Distributor and Audio and Video Unlimited, Inc. ["TS/AVU"]) were disallowed based on the claim that delivery of merchandise took place in New York State without a properly completed out-of-state resale permit. Finally, the auditor initially disallowed, for lack of properly completed resale certificates, claimed sales for resale to other businesses (other than the Massachusetts businesses) in the aggregate amount of $2,681,489.00. Accordingly, the auditor's initial disallowance totalled $3,482,430.00 in claimed nontaxable sales. In turn, the auditor issued a Statement of Proposed Audit Adjustment (the 30-day letter) seeking tax due in the amount of $294,586.96.

Subsequent to the above-described initial calculations, the auditor issued third-party confirmation letters to those vendors doing business with petitioner and for whom petitioner presented resale certificates. The auditor's review of the completed resale certificates, plus returned confirmation letters from third parties who had purchased merchandise from petitioner,

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[2]Under New York's then-effective amnesty program, petitioner was allowed to pay tax due plus interest while avoiding the imposition of penalties with regard thereto.

resulted in a reduction in the amount of initial disallowance. In sum, the auditor allowed the amount of claimed exempt sales (per petitioner's invoices) where the third-party confirmation amount matched the amount claimed by petitioner and where a properly completed resale certificate was submitted.[3] In those instances where the third-party confirmation indicated a different amount purchased than that claimed by petitioner, the auditor disallowed the difference between the two claimed amounts and, in turn, disallowed all claimed amounts if no resale certificate was furnished. In sum, after the additional information was received and reviewed, the remaining dollar amount of claimed but disallowed nontaxable sales receipts was as follows:

Amount	Item
$ 356,509.00	Claimed nontaxable sales to businesses in New York State
41,844.00	Claimed exempt sales to diplomatic personnel and/or exempt organizations
723,010.00	Claimed nontaxable sales to TS/AVU
$1,121,363.00	Total

On April 27, 1987, the Division issued to petitioner a Notice of Determination and Demand for Payment of Sales and Use Taxes Due in the amount of $97,244.00 for the period March 1, 1982 through May 31, 1985, plus penalty and interest.[4] As described above, the sum of $4,731.69 in tax is not challenged or at issue (see, finding of fact below), therefore leaving $92,512.31 at issue in this proceeding. In addition, the auditor determined to impose penalty since the results of the audit reflect a 100% increase over the amount of tax reported by petitioner, and because of the auditor's belief that petitioner was negligent for failing to obtain and keep proper exemption documents.

Petitioner's business premises in Queens, New York consisted of a street-level store entrance with a display area approximately 10 feet by 30 feet. The display area included

[3]Of the approximately 100 third-party verification letters sent by the auditor, 92 matched the invoice amount as shown by petitioner, while 8 showed some variance or disallowance (difference in purchase amount per third-party response versus petitioner's invoice amount).

[4]Included in the record are validated consents, the latest of which allowed the assessment in question to be made at any time on or before June 20, 1987.

counters. In addition, the back section of petitioner's premises included a room for storage, a small office and a bathroom. Petitioner's owner and founder, one Harish Patel, testified that petitioner commenced business in or about March 1982. Initially, petitioner utilized the same type of invoice for both its retail and its wholesale sales, with petitioner's employees allegedly writing "resale" on the resale invoices. Shortly after petitioner commenced operations (approximately in late 1982), however, a switch was made whereby smaller sized invoices were used for retail sales, while the originally-used larger invoices were continued for wholesale (resale) sales. Review of such invoices reveals that the word "resale" is written on many, though not all, of such invoices.

Mr. Patel testified that the hottest-selling item on the market during the years in question was the Sony "Walkman". He explained that his family operated electronics stores in London, England and that as a result he (for petitioner) could obtain large quantities of the Walkman. Mr. Patel explained that petitioner's first import shipment of Walkmans was 1,000 units, noting that petitioner could buy such units at a reasonable price and, after including the cost of air shipment, still resell such items at a profit. Mr. Patel estimated that 90% of petitioner's sales during the audit period were sales of Walkman units.

Mr. Patel admitted that petitioner did not obtain resale certificates from most of its customers at the time of sale, noting simply that he "[d]idn't think about it much" and that "we were more interested in getting merchandise in and out as fast as possible." He noted that he was told by various customers that writing "resale" on the invoice was sufficient proof of resale for tax purposes. Mr. Patel also claimed that most of his customers had customers of their own waiting for the Walkman units and purchased from petitioner because petitioner was able to supply such units. He described petitioner, in this regard, as being in essence a warehouse for its customers. Mr. Patel pointed out that in England, where his family owned and operated appliance and electronic stores, a value added tax ("VAT") is imposed at both the wholesale and retail levels (i.e., tax is paid at the time of purchase and is subsequently collected at the time of sale, with the difference between such two amounts remitted to the taxing authorities). There

are no exemptions and, according to Mr. Patel, the wholesale/retail distinction is not an important distinction.

Mr. Patel testified that his accountant advised petitioner that it would need "some kind of proof that a sale is for resale", but did not mention specifically the need for a resale certificate. Mr. Patel also testified that he had never heard of an out-of-state resale permit. As to resale certificates, petitioner had at the commencement of the audit only approximately four or five such certificates, and obtained the balance of such certificates as the result of efforts undertaken during and after the audit in question.

As reflected on invoices submitted in evidence, petitioner sold approximately 8,000 to 9,000 Walkman units to TS/AVU. Most of the TS/AVU invoices include the name "Robert" or "R. Bund" thereon. According to Mr. Patel, Robert Bund was the buyer representing TS/AVU in its transactions with petitioner.

With regard to the TS/AVU sales, petitioner submitted a letter dated November 15, 1988 under the letterhead of "T. Sack Company, Inc. - Electronics Distributor". This letter, signed by Robert M. Bund and listing T. Sack's address as 185 New Boston Street, Woburn, Massachusetts 01801, provides as follows:

> "To Whom It May Concern:
>
> "During 1982, 83, and 84, in my capacity as purchasing agent for T. Sack Company, and Audio Video Unlimited Incorporated (both of Massachusetts), I purchased consumer electronics products from Intercontinental Audio and Video Incorporated.
>
> "These goods were purchased for resale and were marketed in New England. If you require a specific list of dates and amounts, we can provide it; however, the records are in storage, and it will take some time to retrieve them."

In connection with the hearings held herein, petitioner also pursued proceedings in Massachusetts and eventually secured testimony from Mr. Bund.[5] The transcript of Mr. Bund's testimony reveals, as petitioner essentially admits, that Mr. Bund has no present recall of having transacted business with petitioner on behalf of TS/AVU. However, said testimony does

[5]Said testimony was taken under subpoena in Superior Court, Middlesex County, Massachusetts under threat of contempt against Mr. Bund for his prior failure(s) to appear and testify.

include affirmative statements by Mr. Bund that he was a buyer and trader for TS/AVU, that such entities were wholesalers purchasing consumer electronic equipment and reselling the same to various chain stores in the greater Boston, Massachusetts area, and that any purchases by TS/AVU from petitioner would have been made for wholesale (i.e., resale) purposes.[6]

With regard to the sales to other businesses, petitioner submitted resale certificates for sales totalling $191,076.00. These certificates lack purchaser signatures. Mr. Patel explained that he obtained the certificates or information thereon from the purchasers in question (after the audit), and that while such purchasers were generally willing to provide such information they were generally unwilling to sign the certificates. Mr. Patel testified that his observations of the purchasers' business premises, as well as advice given to him on visits, indicated and confirmed his initial understanding that these purchasers would be reselling the goods purchased from petitioner. In addition, petitioner submitted business cards for some of these entities indicating that they were wholesale sellers and/or importers.

Review of the invoices submitted for the sales to other businesses reveals sales amounts ranging from a low of $24.00 to a high of $46,083.00 (excluding sales to Mastermind International, Inc. totalling $63,918.00). Many of such invoices do not carry a purchaser address. Finally, with regard to one such purchaser, Mastermind International, Inc., and its repeat purchases totalling $63,918.00, petitioner submitted a letter on Mastermind letterhead signed by its director of sales. This letter, described as marketing correspondence, is addressed "Dear Buyer" and reveals Mastermind to be a seller or distributor (as opposed to an end user) of the types of products sold by petitioner.

Shortly after the period at issue, petitioner ceased its business operations. According to Mr. Patel, the main reasons for ending business were that (a) petitioner no longer enjoyed circumstances where it (versus other suppliers) was able to obtain large quantities of one very popular item (the "Walkman") and (b) as a result of the subject audit, petitioner refused to make

[6]Mr. Bund noted, in connection with the potential difficulty in obtaining TS/AVU business records, that "T. Sack" stood for "Trudy Sack", who was Mr. Bund's spouse and with whom Mr. Bund was engaged in less than amicable divorce proceedings.

sales without receiving a fully completed resale certificate thereby resulting in many purchasers' outright refusal to buy merchandise from petitioner.

OPINION

In the determination below, the Administrative Law Judge reviewed various sections of the sales tax law along with the regulations which allow a vendor to accept a properly completed resale certificate from a purchaser, holding that "[r]eceiving such a certificate, stating that the property (or service) is being purchased for resale, protects the vendor and places the burden on the purchaser to prove that the receipt is not taxable (see, Matter of Entech Mgt. Services Corp., Tax Appeals Tribunal, June 23, 1994)" (Determination, conclusion of law "B").

Since petitioner admitted to not having proper certificates for those sales remaining in dispute as well as admitting to carrying the burden of establishing the nontaxability of the sales at issue, the Administrative Law Judge held that "the specific question in this case becomes whether petitioner has provided sufficient evidence to carry its burden of establishing that some or all of the sales in question were sales for resale or were otherwise not subject to tax" (Determination, conclusion of law "C").

The Administrative Law Judge, after breaking down the sales and amounts remaining at issue into two categories and further into two subgroups, held: (1) sales in the amount of $723,010.00 to TS/AVU were wholesale sales (sales for resale) and the evidence produced satisfies petitioner's burden of proving that such sales were not retail sales and, thus, the receipts therefrom should not be subject to tax; (2) sales to Mastermind totalling $63,918.00 were also sales for resale and not subject to tax; and (3) petitioner failed to provide evidence sufficient to support nontaxability for the balance of sales to other businesses and, therefore, such receipts remain subject to tax.

The Administrative Law Judge also sustained penalty against petitioner holding that petitioner's efforts were minimal at best in obtaining the required proof of nontaxability at the time of sale, and further noting that due to the manner in which petitioner recorded and accounted for sales, certain sales receipts were not included on its sales tax returns.

Both petitioner and the Division took exception to the determination of the Administrative Law Judge.

Petitioner, on exception, after a review of the statute and regulations relating to the imposition of penalties and interest, argues that said penalty and additional interest assessments should be vacated because of the substantial assessment reduction (to less than ten percent of the original assessment) as well as the facts established at hearing which justify a determination of reasonable cause and not willful neglect in connection with petitioner's original failure to pay the correct amount due.

The Division, on exception, requests a modification to certain findings of fact and conclusions of law in order to correctly reflect the evidence presented at hearing, arguing that due to insufficient evidence, petitioner failed to sustain its burden of proving that sales to TS/AVU and Mastermind were not subject to sales tax.

The Division reviewed the applicable law relating to retail sales subject to sales tax, the regulations relating to recordkeeping requirements of sales tax vendors and, after visiting the TS/AVU transaction and the testimony of both Harish Patel and Robert Bund, argued that "[t]he ALJ strained mightily to find the Petitioner's evidence to be sufficient to overcome the statutory presumption of taxability" (Division's Brief in Support of Exception, p. 17).

The Division argues that the Administrative Law Judge erred in that "the record does not establish that the Petitioner's merchandise was ever removed from this State to be resold; that ALJ misjudged the true issue before him and the quality of the evidence produced by the Petitioner" (Division's Brief in Support of Exception, p. 19).

The Division discussed the question of the credibility of witness testimony referencing Tribunal decisions and policy relating to same, arguing that "[a]lthough the ALJ appears to have taken great pains in choosing not to characterize the testimony of either man as 'credible', the Determination is clearly based upon the fact that he accepted the Petitioner's characterization of that evidence. That he specifically chose not to label their testimony as 'credible' may be indicative of not wanting to wholeheartedly endorse the believability of any such testimony"

(Division's Brief in Support of Exception, p. 21).

The Division further argues that the Tribunal, by its "de novo" powers of review under Tax Law § 2006(7), is not bound to accept what an Administrative Law Judge determines is "clear and convincing" evidence sufficient to rebut the statutory presumption of taxability and, in the case at hand, the Administrative Law Judge's determination, being erroneous, should be reversed.

The Division reviewed petitioner's obligation as a registered vendor to collect sales taxes imposed on sales of tangible personal property arguing that the evidence presented by petitioner relating to the Mastermind sales is insufficient to overcome the statutory presumption of taxability and, therefore, the Administrative Law Judge's determination should be reversed.

Finally, the Division argues the determination of the Administrative Law Judge correctly sustained the imposition of penalty and interest.

Petitioner, in a memorandum of law in opposition to the Division's exception to the determination of the Administrative Law Judge and in reply to the Division's memorandum opposing petitioner's exception, argues that while there is no fundamental disagreement as to the law governing the taxability of sales transactions under the Tax Law, there is great disagreement as to the evaluation and import of the evidence adduced during the hearing before the Administrative Law Judge and whether that evidence, viewed as a whole, was sufficient to overcome the presumption of taxability. To this end, petitioner argues the determination of the Administrative Law Judge was correct in finding that the evidence presented overcame the statutory presumption and, thus, petitioner met its burden with respect to the sales to T. Sack/AVU and Mastermind.

In addition to visiting the Tax Law and applicable regulations as well as the standard of review of this Tribunal, petitioner reviewed the auditor's findings and testimony, the testimony of Mr. Patel and Mr. Bund, and argued, while pointing out the defects in the arguments presented by the Division, that all of the evidence together clearly demonstrates that the sales in question were indeed sales for resale.

Petitioner further argues that the Division's arguments in support of the auditor's determination to impose penalties and interest on the assessment in issue is based on faulty interpretations of both the relevant law as well as the facts developed at the hearing before the Administrative Law Judge.

In response, the Division points out that its exception is not an attack on the Administrative Law Judge but concerns the determination only, arguing that "[t]he ALJ's reliance upon the Petitioner's unsupported, uncorroborated, unverified and contradictory proof was incorrect, not 'improper'" and "[b]ased on the record below the reliance on Petitioner's inadequate proof was in error" (Division's Reply Brief, p. 1).

The Division also argues that there is a fundamental disagreement in this matter regarding the applicable law and its interpretation relating to the proof required as to the purchaser's intended use of product purchased from a New York vendor, arguing further, "[c]learly, independent verification of a Petitioner's claims of non-taxability are the essence of the applicable law and regulations" (Division's Reply Brief, p. 2).

The Division, in response: (1) argues petitioner's presentation lacked proper documentation to prove nontaxability; (2) rejected petitioner's evidence as nonsupporting and insufficient to overcome the statutory presumption of taxability; (3) labeled as strained petitioner's interpretation of Mr. Bund's deposition; (4) argues for the return to petitioner of Mr. Bund's November 12, 1991 deposition which was presented for the first time to this Tribunal; (5) argues no weight should be given to petitioner's attorney's explanation relating to a December 16, 1993 deposition session; and (6) points out that petitioner is in this bind due to its own negligence as a vendor and is responsible to prove that its sales were nontaxable.

Petitioner's reply to the Division's response is a clarification that it did not purposely or nonpurposely state or suggest that the Division's exception constituted an attack on Administrative Law Judge Galliher, but instead petitioner understands that both exceptions were limited to the decision he reached.

After reviewing the allegations of both petitioner and the Division presented to us on exception, along with a review of the record before us, we find no basis for modifying the determination of the Administrative Law Judge.

We reject the Division's request to modify certain findings of fact and conclusions of law as the record supports those findings and conclusions reached by the Administrative Law Judge and, further, we agree with the Administrative Law Judge that "[i]n light of all of the evidence taken as a whole" (Determination, conclusion of law "D", emphasis added) petitioner has established that the sales to TS/AVU and Mastermind were sales for resale and, thus, should not have been subjected to tax.

While we agree with the Division that this Tribunal has observed that it is not absolutely bound by an Administrative Law Judge's determination of witness credibility (Matter of Wachsman, Tax Appeals Tribunal, November 30, 1995), we note that the credibility of witnesses is a determination within the domain of the trier of the facts, the person who has the opportunity to view the witness first hand and evaluate the relevance and truthfulness of their testimony (Matter of Spallina, Tax Appeals Tribunal, February 27, 1992). In the matter at hand, after reviewing the testimony and evidence before us, we concur with the Administrative Law Judge who found the testimony of petitioner's owner and founder to be truthful.

As to petitioner's argument that penalty and interest assessments were improper under the statute and regulations, we agree with the Administrative Law Judge's sustaining same and holding that "[w]hile as the result of post-sale efforts petitioner has proven entitlement to a substantial reduction in the amount of tax due, it remains that petitioner's efforts to obtain requisite proof of nontaxability at the time of sale were minimal at best" (Determination, conclusion of law "F").

And finally, while we disregard reference to a December 16, 1993 deposition by both the Division and petitioner as not relevant to the decision herein, we must address and reject petitioner's attempt at this late date to place before this Tribunal additional evidence in the form of a deposition of November 12, 1991 which was not part of the record below.

As we held in Matter of Schoonover (Tax Appeals Tribunal, August 15, 1991):

> "[i]n order to maintain a fair and efficient hearing system, it is essential that the hearing process be both defined and final. If the parties are able to submit additional evidence after the record is closed, there is neither definition nor finality to the hearing. Further, the submission of evidence after the closing of the record denies the adversary the right to question the evidence on the record. For these reasons we must follow our policy of not allowing the submission of evidence after the closing of the record (see, Matter of Oggi Rest., Tax Appeals Tribunal November 30, 1990; Matter of Morgan Guar. Trust Co. of N.Y., Tax Appeals Tribunal, May 10, 1990; Matter of International Ore & Fertilizer Corp., Tax Appeals Tribunal, March 1, 1990; Matter of Ronnie's Suburban Inn, Tax Appeals Tribunal, May 11, 1989; Matter of Modern Refractories, Tax Appeals Tribunal, December 15, 1988)."

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exceptions of both petitioner Intercontinental Audio & Video, Inc. and the Division are denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of Intercontinental Audio & Video, Inc. is granted as indicated in conclusions of law "E" and "G" of the determination of the Administrative Law Judge; and

4. The Notice of Determination and Demand for Payment of Sales and Use Taxes Due, dated April 27, 1987, as modified by the determination of the Administrative Law Judge, is sustained.

DATED: Troy, New York
January 4, 1996

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Donald C. DeWitt
Donald C. DeWitt
Commissioner