

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>ALDE TAXI METER SERVICE, INC.</b>	:	DECISION
<b>AND ALVARO GALLEG0, AS OFFICER</b>	:	DTA No. 807075
	:	
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 June 1, 1983	:	
through February 28, 1986	:	

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Petitioners Alde Taxi Meter Service, Inc. and Alvaro Gallego, as officer, 43-05 Vernon Boulevard, Long Island City, New York 11101 filed an exception to the determination of the Administrative Law Judge issued on April 18, 1991 with respect to their 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 June 1, 1983 through February 28, 1986. Petitioners appeared by Salvatore Bochicchio, C.P.A., of Schultz, Gladstone, Madonna & Co., C.P.A.'s. The Division of Taxation appeared by William F. Collins, Esq. (Lawrence A. Newman, Esq., of counsel).

Petitioners did not file a brief on exception. The Division of Taxation filed a letter in lieu of a brief. Oral argument, requested by petitioners, was denied.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

***ISSUES***

I. Whether petitioners have demonstrated that the test periods used to determine sales tax due are non-representative of the audit period.

II. Whether petitioners have demonstrated that certain sales were sales for resale.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge except for finding of fact "7" which has been modified. The Administrative Law Judge's findings of fact and the modified finding of fact are set forth below.

Petitioner Alde Taxi Meter Service, Inc. is a business involved in the assembling, selling, installing and repairing of taxi meters.

Petitioner Alvaro Gallego is president of Alde Taxi Meter Service, Inc. responsible for the supervision of the business's employees.

On June 4, 1986, a tax auditor for the Department of Taxation and Finance, Harold Kaplan, sent an appointment letter to petitioner Alde Taxi Meter Service, Inc. informing it that a field examination of its sales tax returns would be performed on June 18, 1986. The letter also requested that all books and records pertaining to the audit period of June 1, 1983 to the present be available on June 18, 1986 including "journals, ledgers, Sales invoices, purchase invoices, cash register tapes, exemption certificates and all Sales Tax records."

Mr. Kaplan was referred by petitioners to their accountant. After reviewing the records available, the tax auditor determined that the books and records were inadequate to perform a full period audit because the corporation did not offer invoices for the entire audit period or resale certificates for all the nontaxable sales claimed.

Mr. Kaplan compared the cash receipts statements with the Federal corporate returns and New York sales tax returns (ST-100's) for the period June 1, 1983 through February 28, 1986. The auditor determined that the sales reported in the cash receipts statements agreed with those in the Federal corporate return for the period ending April 30, 1985, but that there were large discrepancies between the gross sales reported in the cash receipts statements and in the New York sales tax returns for the audit period. However, the taxable sales reported in the cash receipts statements were in agreement, with minor discrepancies, with those reported in the New York sales tax returns.

The auditor selected two consecutive quarters for the test period -- the quarters ending May 31, 1984 and August 31, 1984. The auditor deemed these two quarters as representative, taking into account the corporation's notable increase in sales due to the installation of new printer receipts meters which replaced the older mechanical/digital meters.<sup>1</sup> According to the auditor, the first quarter represented the normal volume of sales prior to the changeover in taxi meters, whereas the second quarter represented the peak volume in sales for the entire audit period.<sup>2</sup>

We modify finding of fact "7" of the Administrative Law Judge's determination to read as follows:

The auditor calculated disallowance rates for the two test quarters, and also calculated a six-month disallowance rate. For the quarter ending May 31, 1984, the auditor determined that only 28.63% of the nontaxable sales reported in the cash receipts statements could be substantiated by virtue of resale certificates or as payments from a sublet tenant (which consisted of non-sale income). This percentage (the allowance rate) was calculated by dividing nontaxable sales allowed for the quarter by nontaxable sales claimed for the quarter. For the quarter ending August 31, 1984, the auditor incorrectly found that only 49% of the nontaxable sales claimed in the cash receipts statements could be substantiated. In fact, only 33% of the nontaxable sales claimed in the cash receipts statements could be substantiated. The auditor erred in his calculation of the allowance rate for the quarter ending August 31, 1984. The auditor divided nontaxable sales

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<sup>1</sup>The replacement of the older meters with the printer receipts meters apparently resulted from a ruling by the Taxi and Limousine Commission.

<sup>2</sup>According to the auditor's workpapers, the total sales for the quarters of the audit period per the cash receipts statements and sales tax returns (ST-100's) were as follows:

<u>Quarter Ending</u>	<u>Cash Receipts</u>	<u>ST-100's</u>
August 31, 1983	\$ 36,253.00	\$ 37,080.00
November 30, 1983	36,856.00	35,675.00
February 28, 1984	52,209.00	36,980.00
May 31, 1984	145,935.00	40,180.00
August 31, 1984	325,508.00	295,970.00
November 30, 1984	326,235.00	190,270.00
February 28, 1985	99,202.00	103,989.00
May 31, 1985	101,433.00	88,942.00
August 31, 1985	75,056.00	83,021.00
November 30, 1985	75,072.00	84,675.00
February 28, 1986	79,035.00	84,976.00

allowed by the nontaxable sales which had a corresponding invoice.<sup>3</sup> As previously stated, the proper calculation is nontaxable sales allowed for the quarter divided by nontaxable sales claimed for the quarter.

Treating the two quarters as a six-month test period resulted in a disallowance rate of 69.33%. The six-month disallowance rate is correct; the quarterly disallowance rates calculated by the auditor were not used in determining the six-month percentages. The auditor, therefore, determined the tax deficiency by applying the 69.33% disallowance rate to the nontaxable sales claimed in the cash receipts statements for each quarter of the audit period.<sup>4</sup>

On August 21, 1986, petitioner Gallego signed a consent form extending until March 20, 1987 the period of limitations for assessment of sales and use taxes for the taxable period June 1, 1983 through February 28, 1984.

Four notices of determination and demands for payment of sales and use taxes due, dated March 9, 1987, were issued to petitioners. Petitioners each received a notice assessing tax due in the following amounts for the respective tax quarters:

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The sales transactions relevant to the calculation of the disallowance rates may all be grouped under a general heading as "nontaxable sales claimed," but several subgroups of this heading are actually used to calculate the allowance/disallowance rates. Therefore, the transactions need to be further broken down into the following subgroups to aid in understanding the auditor's computations:

- A. Total nontaxable sales claimed
  - 1. Nontaxable sales supported by a corresponding invoice
    - i. Allowed nontaxable sales
    - ii. Disallowed nontaxable sales
  - 2. Nontaxable sales not supported by a corresponding invoice.

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The Administrative Law Judge's finding of fact "7" read as follows:

"For the quarter ending May 31, 1984, the auditor determined that only 28.63% of the nontaxable sales reported in the cash receipts statements could be substantiated by virtue of resale certificates or as payments from a sublet tenant (which consisted of non-sale income). For the quarter ending August 31, 1984, the auditor found that only 49% of the nontaxable sales claimed in the cash receipts statements could be substantiated. Treating the two quarters as a six-month test period resulted in a disallowance rate of 69.33%. The auditor, therefore, determined the tax deficiency by applying the 69.33% disallowance rate to the nontaxable sales claimed in the cash receipts statements for each quarter of the audit period."

This fact was modified to more accurately reflect the record, and to explain the computations made by the auditor as set out in the record.

<u>Period Ending</u>	<u>Tax Due</u>	<u>Penalty</u>	<u>Interest</u>	<u>Amount Due</u>
8/31/83	\$ 1,036.04	\$ 259.01	\$ 533.67	
11/30/83	1,110.86	277.72	522.61	
2/28/84	1,957.81	489.45	837.14	
5/31/84	7,185.75	1,796.44	2,766.99	
8/31/84	6,429.47	1,607.37	2,210.50	
11/30/84	11,720.69	2,930.17	3,565.50	
2/28/85	2,321.96	580.49	618.08	
5/31/85	3,846.07	923.06	878.71	
8/31/85	811.39	170.39	155.69	
11/30/85	711.98	128.16	111.60	
2/28/86	<u>762.14</u>	<u>114.32</u>	<u>93.77</u>	
Total	\$37,894.16	\$9,276.58	\$12,294.26	\$59,465.00

A second notice sent to each petitioner assessed an omnibus penalty in the total amount of \$228.54 for the period June 1, 1985 through February 28, 1986.

In a petition dated May 20, 1987, petitioners challenged the four notices stating that the test months were not representative of business activity and that additional records and certificates were now available.

A conciliation conference was held on November 1, 1988. The conferee sustained the statutory notices by order dated March 31, 1989.

By petition dated June 27, 1989, petitioners alleged that the Division of Taxation ("Division") erred in using a non-representative sample, disallowing sales made for resale and misapplying receipts by counting the same amounts twice during the sample period. Petitioners did not challenge in their petition, nor during the hearing, that Alvaro Gallego was a "person required to collect tax" under the Tax Law.

During the hearing on September 12, 1990, petitioners submitted into evidence two documents. One document was a resale certificate dated February 6, 1989, indicating Alde Taxi Meter Service, as vendor, and signed by the president of Kafka Management, as purchaser. The second document was a sheet of paper prepared by petitioner listing dates, taxi companies and the amount paid by Kafka Management. According to the testimony by Alvaro Gallego, this list represented sales for resale to Kafka Management from May 16, 1984 through August 28, 1984 for work performed on cabs owned by each of the separate taxi companies listed which were managed by Kafka Management.

During the hearing, petitioners' representative requested that he be permitted time to submit additional invoices and other documents that were not available at the time of the audit for the Division to review. Petitioners were to submit these additional documents by November 21, 1990. To date, no further documentation has been submitted.

Both parties declined to make closing arguments at the conclusion of the hearing, but reserved until February 20, 1991 to submit memoranda of law in support of their respective positions. Neither party has submitted a memorandum of law.

### ***OPINION***

The Administrative Law Judge held that, when challenging the results of an audit, the taxpayer bears the burden of demonstrating that an audit method or assessment amount is erroneous. The Administrative Law Judge determined that petitioners had not met their burden of showing that the audit method used was erroneous. Therefore, the Administrative Law Judge denied the petition of petitioners and sustained the four notices of determination and demand for payment of sales and use taxes due.

On exception, petitioners make several assertions. First, they argue that the test periods used to determine sales tax due were non-representative of the audit period because petitioners experienced an increased volume of business due to new equipment requirements in the taxicab industry.

Second, they insist that the percentage of verifiable nontaxable sales claimed during the test period ending August 31, 1984 is non-representative. Petitioners allege that the auditor's test was skewed due to a high volume of petitioners' business (approximately 47.5% according to petitioners' exception) generated by one customer, Kafka Management, during the audit period.

Third, petitioners assert that the auditor erred in his calculation of the disallowance rate for the quarter ending May 1984 and, therefore, in the calculation of the disallowance rate for the entire test period (March to August 1984).

Finally, petitioners contend that certain sales during the audit period were sales for resale. Petitioners allege that, since Kafka Management provided petitioners with a resale certificate, albeit late, and since Kafka Management's business is the leasing of taxis, which necessarily includes the resale of meters, this combination of factors supports the conclusion that the sales were for resale.

In opposition, the Division relies on the determination of the Administrative Law Judge.

We affirm the determination of the Administrative Law Judge.

Every person required to collect sales tax is also required to keep records of every sale (Tax Law § 1135; see also, 20 NYCRR 533.2). Failure to maintain records, or the maintenance of inadequate records, will result in the Division estimating tax due based upon external indices (Tax Law § 1138[a]).

When estimating sales tax due, the Division must adopt an audit method that will reasonably calculate the amount of taxes due (see, Matter of W. T. Grant Co. v. Joseph, 2 NY2d 196, 159 NYS2d 150, cert denied 355 US 869). The burden is then on the taxpayer to demonstrate, by clear and convincing evidence, that the audit method employed or the tax assessed was unreasonable (see, Matter of Meskouris Bros. v. Chu, 139 AD2d 813, 526 NYS2d 679; Matter of Surface Line Operators Fraternal Org. v. Tully, 85 AD2d 858, 446 NYS2d 451).

However, unreasonable is not the same as imprecise. The fact that an estimation of sales tax due is required negates any demand for exactness on the part of the auditor (Matter of Meskouris Bros. v. Chu, supra). Accuracy was sacrificed in the first instance by the failure of the taxpayer to maintain adequate records. This initial failure cannot later inure to the taxpayer's benefit. Therefore, the audit method utilized must only be reasonable (see, Matter of W. T. Grant Co. v. Joseph, supra).

The Administrative Law Judge determined that the audit method employed by the auditor was reasonable. We agree. As stated by the Administrative Law Judge:

"the tax auditor determined that the books and records [of petitioners] were adequate for the purpose of calculating total sales tax during the entire audit period, but were inadequate to verify the nontaxable sales claimed. The

auditor used the test period to determine only the percentage of verifiable nontaxable sales claimed in each quarter of the audit period."

As discussed in the determination below, the relationship between nontaxable sales and total sales is not necessarily affected by the volume of total sales. Nontaxable sales, as a percentage of total sales, would not necessarily change its position relative to the total sales for the quarter, regardless of how those total sales fluctuated.

Petitioners also alleged that the percentage of verifiable nontaxable sales for the quarter ending August 1984 is skewed because of the large volume of business generated by one customer, Kafka Management. Petitioners' bare allegation that the large volume of sales to a single purchaser during the quarter ending August 1984 inflated the percentage of unverified nontaxable sales does not prove this as a fact. Petitioners have offered no proof that the rate of unverified nontaxable sales was lower in quarters other than in the audited period.

Finally, petitioners challenged the disallowance rate for the quarter ending May 1984 and, therefore, the disallowance rate for the entire audit period. To facilitate analysis of the audit, we will first set out the steps taken by the auditor, then examine the auditor's error and its implications, and then address the position of petitioners.

The auditor determined that petitioners' records for the audit period were incomplete with regard to the nontaxable sales claimed. Based upon this, the auditor decided to conduct a test of the audit period and chose the quarters ending May 31, 1984 and August 31, 1984 as test periods.<sup>5</sup>

First, the auditor examined the test periods to determine which of the nontaxable sales transactions claimed for the quarter had a corresponding invoice in petitioners' records:

<u>QUARTER ENDING</u>	<u>MAY 1984</u>	<u>AUGUST 1984</u>
Total nontax. sales claimed	\$125,631.00	\$112,409.00
Nontax. sales supported by		

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<sup>5</sup>The term "test" was used in several, different contexts throughout the audit workpapers and hearing transcript. This varied usage of the term contributes to some of the confusion surrounding the audit method.

a corresponding invoice	37,544.00	74,997.00
Nontax. sales not supported by a corresponding invoice	88,087.00	37,412.00 <sup>6</sup>

The auditor then examined each claimed nontaxable sales transaction which had a corresponding invoice to determine if the claimed nontaxability was allowable:

<u>QUARTER ENDING</u>	<u>MAY 1984</u>	<u>AUGUST 1984</u>
Total nontax. sales claimed	\$125,631.00	\$112,409.00
Nontax. sales supported by a corresponding invoice	37,544.00	74,997.00
allowed	35,968.00	37,040.00
disallowed	1,576.00	37,957.00
Nontax. sales not supported by a corresponding invoice	88,087.00	37,412.00

The claimed nontaxable sales transactions which had a corresponding invoice were individually listed in the workpapers. However, the auditor disallowed all claimed nontaxable sales transactions which did not have a corresponding invoice as a preliminary matter, without further examining each transaction. Therefore, these transactions do not appear individually in the workpapers, though they were part of the final calculation.

Next, the auditor divided the sum of the nontaxable sales allowed for the six-month period by the sum of the total nontaxable sales claimed for the six-month period:

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<sup>6</sup>The figures used in the calculation of the disallowance rates were taken from the auditor's workpapers (Exhibit G) as follows:

<u>MAY 1984</u>	<u>AUGUST 1984</u>
\$125,631.00: p. 12, line 4	\$112,409.00: p. 14, line 4
37,544.00: p. 13, line 39	74,997.00: p. 18, line 6
35,968.00: p. 13, line 28	37,040.00: p. 18, line 6
1,576.00: p. 13, line 28	37,957.00: p. 18, line 6

	<u>NONTAX SALES ALLOWED</u>	<u>NONTAX SALES CLAIMED</u>
May 1984	\$35,968.00	\$125,631.00
August 1984	<u>37,040.00</u>	<u>112,409.00</u>
Totals	73,008.00	238,040.00

\$73,008.00 divided by 238,040.00 = .307 = 30.7% (six-month allowance rate)

Therefore, the six-month disallowance rate was calculated as follows:

	<u>NONTAX SALES DISALLOWED</u>	<u>NONTAX SALES CLAIMED</u>
May 1984		\$125,631.00
sales w/invoices	\$ 1,576.00	
sales w/o invoices	88,087.00	
August 1984		112,409.00
sales w/invoices	37,957.00	
sales w/o invoices	<u>37,412.00</u>	
Totals	165,032.00	<u>238,040.00</u>

\$165,032.00 divided by 238,040.00 = .693 = 69.3% (six-month disallowance rate)

The confusion stems from the auditor's calculation of quarterly allowance and disallowance rates. The auditor erred in his calculation of the rates for the quarter ending August 1984. The auditor divided nontaxable sales allowed by the nontaxable sales which were supported by an invoice. The correct calculation was to divide nontaxable sales allowed by the total nontaxable sales claimed for the quarter:

<u>QUARTER ENDING</u>	<u>MAY 1984</u>	<u>AUGUST 1984</u>
Total nontax. sales claimed	\$125,631.00	\$112,409.00
Nontax. sales supported by a corresponding invoice	37,544.00	74,997.00
allowed	35,968.00	37,040.00
disallowed	1,576.00	37,957.00

per auditor's workpapers for August 1984:

\$37,040 divided by 74,997 = .494 = 49.4% (allowance rate)

the correct calculation is:

\$37,040 divided by 112,409 = .330 = 33% (allowance rate)

This error by the auditor is inconsequential. In the calculation of the six-month disallowance rate, the auditor did not use these quarterly rates. Rather, as set out above, the auditor totalled the figures from both quarters to create a percentage for the six-month test period ending August 1984. The calculation of the disallowance rate was based upon these six-month figures

and, therefore, was not affected by the miscalculation which appears in the workpapers (see, Exhibit G, auditor's workpapers, p. 18).

Petitioners' version of the proper audit method to be used is incorrect. Petitioners interpret the auditor's workpapers to show that a sample was taken within a sample, i.e., that, within the two quarters chosen to be representative of the audit period (the test quarters), a second level of sampling was conducted whereby only a portion of the transactions within the sample quarters were tested.<sup>7</sup> Based on this, petitioners calculate quarterly allowance and disallowance rates without giving any consideration to the claimed nontaxable sales transactions which were disallowed because they were not supported by invoices. This is incorrect and results in petitioners arriving at a disallowance rate substantially lower than the disallowance rate calculated by the auditor.

Petitioners calculate the disallowance rate in the following manner:

<u>QUARTER ENDING</u>	<u>MAY 1984</u>	<u>AUGUST 1984</u>
Total nontax. sales claimed	\$125,631.00	\$112,409.00
Nontax. sales supported by a corresponding invoice	37,544.00	74,997.00
allowed	35,968.00	37,040.00
disallowed	1,576.00	37,957.00
Nontax. sales not supported by a corresponding invoice	88,087.00	37,412.00
		\$35,968.00 divided by 37,544.00 = .958 = 95.8% (allowance rate for the qtr. ending May 1984)
		\$37,040.00 divided by 74,997.00 = .494 = 49.4% (allowance rate for the qtr. ending Aug. 1984)
<u>QUARTER ENDING</u>	<u>MAY 1984</u>	<u>AUGUST 1984</u>
Total nontaxable sales claimed	\$125,631.00	\$112,409.00

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<sup>7</sup>This interpretation may have been due to the auditor's preliminary disallowance of all claimed nontaxable sales transactions which did not have a corresponding invoice. These transactions are not individually listed in the workpapers. This omission, in conjunction with the auditor's miscalculation for the quarter ending August 1984, may have led petitioners to assume that a second level of sampling had occurred within the test periods.

Allowance rate	<u>x .958</u>	<u>x .496</u>
Total nontaxable sales allowed	120,354.50	55,754.86

	<u>NONTAX SALES ALLOWED</u>	<u>NONTAX SALES CLAIMED</u>
May 1984	\$120,354.50	\$125,631.00
August 1984	<u>55,754.86</u>	<u>112,409.00</u>
Totals	176,109.36	238,040.00

\$176,109.36 divided by 238,040.00 = .740 = 74% (six-month allowance rate)

\$61,930.40 divided by 238,040.00 = .260 = 26% (six-month disallowance rate)

In sum, the auditor's calculation of the six-month disallowance rate was correct. Petitioners' challenge based upon an error of the auditor must fail. Though the auditor did err, the error was not a factor in the final calculation; rather, it was an error in a side calculation which was never incorporated in the final figures. Therefore, the error is irrelevant.

The next issue concerns whether certain sales have been shown to be sales for resale. Every retail sale of tangible personal property is subject to sales tax, unless otherwise exempted or excluded (Tax Law § 1105[a]). A "retail sale" is defined as "[a] sale of tangible personal property to any person for any purpose, other than . . . for resale as such or as a physical component part of tangible personal property . . ." (Tax Law § 1101[b][4][i][A]). All receipts from the sale of property or services are presumed to be subject to sales tax pursuant to Tax Law § 1105; the burden is on the taxpayer to prove otherwise (Tax Law § 1132[c]; see, Matter of Sunny Vending Co. v. State Tax Commn., 101 AD2d 666, 475 NYS2d 896).

Petitioners, in an effort to show that the sales were for resale, have offered: a resale certificate from Kafka Management, a list of work performed by petitioners for Kafka Management, and the testimony of Mr. Alvaro Gallego, president of Alde Taxi Meter Service.

The Administrative Law Judge determined that the resale certificate presented by petitioners at hearing is insufficient. We agree. Tax Law § 1132 sets out a ninety-day period, beginning from the date of purchase, within which the vendor must secure from the purchaser a certificate of resale, thereby relieving the vendor of its duty to collect sales tax on the

transaction (Tax Law § 1132[c][1]). Receipt of the resale certificate beyond the the ninety-day period will cause the sale to be deemed taxable (see, Tax Law § 1105). The blanket resale certificate submitted by petitioners is dated February 2, 1989, some three years after the audit period (see, Exhibit 1). The amount of time between the audited transactions and the alleged applicability of this certificate results in petitioners having the burden of proving that a valid resale occurred. Further, the certificate fails to state the period or transactions to which it applies. Without more information, it cannot be determined whether the certificate is meant to relate to prior dealings, particularly, the transactions at issue, or contemporaneous dealings with Kafka Management. Therefore, the certificate is insufficient on its face

Next, the Administrative Law Judge determined that the list of work performed by petitioners for Kafka Management was inadequate to demonstrate that the sales were for resale (see, Exhibit 2). The list sets out the work performed by petitioners for the companies listed, allegedly on behalf of Kafka Management. But the list does not contribute any information showing that the sales were sales for resale. Without more, it cannot be determined that the sales to the companies listed were, in fact, sales for resale to Kafka Management.

Finally, the Administrative Law Judge determined that the testimony of Mr. Alvaro Gallego was inadequate. We agree. Mr. Gallego's testimony, though deemed credible, was found to be insufficient. Mr. Gallego was unable to verify that Kafka Management was reselling the products it purchased from and had installed by Alde Taxi Meter Service (see, Tr., pp. 53-55). Without evidence of Kafka's treatment of the installed equipment, the sales of the equipment to Kafka cannot be classified as sales for resale (see, Matter of Savemart, Inc. v. State Tax Commn., 105 AD2d 1001, 482 NYS2d 150, appeal dismissed 64 NY2d 1039, 489 NYS2d 1029).

In sum, without a valid resale certificate or other evidence demonstrating actual resales by Kafka Management, petitioners have failed to prove that the tax assessed should be adjusted.

One final matter must be addressed. On exception, petitioners submitted, along with their exception, a list of corporations allegedly leasing their taxicabs to Kafka Management, copies of

receipts for work done on these taxicabs, a letter from Alvaro Gallego to Kafka requesting verification of the resale status of the equipment purchased for these taxicabs, and a copy of the blank resale certificate discussed above. Aside from the resale certificate, none of the items submitted on exception had been entered into evidence at the hearing. Therefore, these items are not part of the record and cannot be considered in our decision, as we are bound to the record before us (see, 20 NYCRR 3000.11[a][3]; 3000.11[e][1]; Matter of Modern Refractories Service Corp., Tax Appeals Tribunal, December 15, 1988; Matter of Ronnie's Suburban Inn, Tax Appeals Tribunal, May 11, 1989).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioners Alde Taxi Meter Service, Inc. and Alvaro Gallego, as officer is denied;
  2. The determination of the Administrative Law Judge is affirmed;
  3. The petition of Alde Taxi Meter Service, Inc. and Alvaro Gallego, as officer is denied;
- and
4. The four notices of determination and demand for payment of sales and use taxes due are sustained.

DATED: Troy, New York  
January 2, 1992

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

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

/s/Maria T. Jones  
Maria T. Jones  
Commissioner