STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
DOUGLAS H. CASEMENT D/B/A PURPLE PARLOR CAR WASH	:	DECISION DTA No. 807411
for Revision of Determinations or for Refunds of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period June 1, 1984 through May 31, 1988	:	

Petitioner Douglas H. Casement d/b/a Purple Parlor Car Wash, 264 Dutchess Turnpike, Poughkeepsie, New York 12603 filed an exception to the determination of the Administrative Law Judge issued on August 8, 1991 with respect to his petition for revision of determinations or for refunds of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1984 through May 31, 1988. Petitioner appeared by Griffith & Yost (Raymond N. McCabe, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Michael B. Infantino, Esq., of counsel).

Petitioner filed a letter in lieu of a brief on exception to be read in conjunction with the brief petitioner submitted to the Administrative Law Judge. The Division of Taxation similarly filed a letter in lieu of a brief in response, relying upon its brief filed below. Oral argument was not requested.

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

ISSUES

I. Whether petitioner's coin-operated car wash operations are exempt from sales tax as "laundering services" under Tax Law § 1105(c)(3)(ii).

II. Whether the imposition of sales tax on petitioner's coin-operated car washes results in an impermissible double taxation.

III. Whether the imposition of sales tax on petitioner's coin-operated car washes results in a denial of equal protection under the New York State and United States Constitutions.

FINDINGS OF FACT

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

Petitioner, Douglas H. Casement, resides at 58 Ridge Road, Poughkeepsie, New York 12603.

Petitioner is a carpenter contractor and also owns two coin-operated self-service car washes (referred to herein as "coin-operated" car washes).

Petitioner maintains separate books and records for his carpentry and for his car wash operations. For purposes of convenience, petitioner's car wash operations have been referred to during the course of the audit and this proceeding as "Purple Parlor Car Wash" and his carpentry business has been referred to as "Douglas H. Casement Enterprises". Both businesses are sole proprietorships.

On August 19, 1988, following an audit, the Division of Taxation (hereinafter the "Division") issued to Douglas H. Casement Enterprises a Notice of Determination and Demand for Payment of Sales and Use Taxes Due which assessed $1,574.15 in tax due, plus penalty and interest for the period June 1, 1984 through May 31, 1986. Also on August 19, 1988 the Division issued a second notice of determination to Douglas H. Casement Enterprises which assessed penalties totaling $51.26 for the period June 1, 1985 through May 31, 1986.

On August 19, 1988, again following an audit, the Division issued to Douglas Casement d/b/a Purple Parlor Car Wash two notices of determination and demands for payment of sales and use taxes due which together assessed $42,417.50 in tax due, plus penalty and interest, for the period June 1, 1984 through May 31, 1988. Also on August 19, 1988 the Division issued an

additional notice of determination to Douglas Casement d/b/a Purple Parlor Car Wash which assessed penalties totaling $3,451.90 for the period June 1, 1985 through May 31, 1988.

Petitioner has been engaged in the coin-operated car wash business for 23 years.

During the audit period, petitioner owned and operated two coin- operated car washes consisting of a total of eleven bays.

A coin-operated, self-service car wash operates in a different manner than a "tunnel" car wash or a "rollover" car wash.

At a coin-operated, self-service car wash the customer drives his car into a bay and inserts quarters into a meter which activates washing equipment for a predetermined period of time. The customer directs a high pressure water spray from a wand which is connected to an equipment room. The equipment room provides hot, softened water, soap and wax to the customer. The customer selects the additives he desires by operating a switch located in the bay. He then washes his car by walking around the vehicle and directing the high pressure spray with the wand.

A customer of a tunnel car wash pays a fee to a cashier and his car is pulled through a tunnel-shaped building where it is washed by machine.

A customer of a rollover car wash inserts coins into a machine and drives his car into a bay where it is washed by machinery while the car either remains stationary or is driven through the bay by the customer.

A customer of a laundromat operates coin-operated washing machines by inserting coins into a slot on each machine which provides the customer with a predetermined washing cycle. The customer washes his clothing by inserting clothes into a tub within the machine, and the machine provides hot water and performs the washing cycle selected by the customer.

An operator of a tunnel car wash collects sales tax from its customers through the use of cashiers who collect the tax at the time the fee for the service is collected.

Both coin-operated car washes and coin-operated laundromats use attendants primarily to clean and maintain equipment and to provide instruction to customers on the use of the

equipment. Attendants do not collect money from the customers and do not handle money collected by the machines.

Between approximately 1946 through 1978, operators of coin- operated laundromats and self-service car washes belonged to the same trade association, the National Automatic Laundry and Cleaning Council.

One trade publication of the car wash industry is the Auto Laundry News.

Petitioner incurs numerous costs in connection with the operation of his self-service car washes. These include water, propane gas to heat the water, gas to heat the floors (to prevent the formation of ice), electricity, detergents and waxes.

During the audit period, petitioner made purchases of propane gas, gas and electricity, supplies and parts, and equipment in connection with his car wash operations.

In its notices of determination and demands for payment of sales and use taxes due dated August 19, 1988, the Division of Taxation included assessments for the quarters ending August 31, 1984, November 30, 1984, February 28, 1985 and May 31, 1985.

Sales tax auditor Richard Incremona conducted the audit of petitioner's carpentry and car wash businesses. On or about June 14, 1988, Mr. Incremona presented to petitioner, and petitioner executed, two forms which purport to extend the period of limitation on assessment for the period June 1, 1984 through May 31, 1985 to September 20, 1988.

At the time he presented the forms to petitioner, Mr. Incremona advised that he (Incremona) could not complete the audit that day and that petitioner had to sign the forms to allow him (Incremona) to return to finish the audit at a later time.

The forms which Mr. Incremona presented to petitioner, and which petitioner signed, were preprinted forms of the Division of Taxation encaptioned "Consent Extending Period of Limitation for Assessment of Sales and Use Taxes Under Articles 28 and 29 of the Tax Law." At the time Mr. Incremona gave these forms to petitioner, none of the blanks on the preprinted forms had been completed.

Petitioner did not see copies of the completed consents until they were shown to him at a conciliation conference held before the Bureau of Conciliation and Mediation Services.

Petitioner agreed with Mr. Incremona's computation of sales tax against Douglas H. Casement Enterprises, and contested only the inclusion of assessments prior to August 31, 1985.

Petitioner was not seeking, and had no reason to seek any form of legislative relief with respect to the proposed assessment against Douglas H. Casement Enterprises.

Although petitioner was seeking legislative repeal of the sales tax on coin-operated car washes during the period the audit was conducted, his discussions with Mr. Incremona concerning legislative relief were "off the record". At no time did petitioner request that the Division of Taxation hold its audit in abeyance pending some form of legislative relief.

Mr. Incremona was unavailable to testify at the hearing, and the Division of Taxation introduced an affidavit executed by Mr. Incremona in lieu of testimony.

OPINION

The Administrative Law Judge rejected petitioner's argument that car washing services fall under the definition for "laundering" within the meaning of Tax Law § 1105(c)(3) and are, therefore, exempt from taxation. The Administrative Law Judge based his determination on the legislative intent of the statute, derived from the context in which the "laundering" exemption appears in the statute -- namely, in a list of other clothing related services -- as well as on a body of case law and the regulations of the Division.

The Administrative Law Judge also did not accept petitioner's claims that the assessment of tax against his car washing services constituted an impermissible double taxation, and that such taxation violated petitioner's equal protection rights under the constitution because it arbitrarily distinguished between the taxation of coin-operated laundromats (exempt from taxation), and coin-operated car washes.

However, based on the Administrative Law Judge's finding that no written consents were given by petitioner to extend the period of limitations for the assessment of tax in accordance

with Tax Law § 1147(c), the Administrative Law Judge cancelled the first four quarters of the audit period, those ended August 31, 1984, November 30, 1984, February 28, 1985, and May 31, 1985, as time-barred and, thus, improperly assessed.

On exception, petitioner reasserts the arguments made before the Administrative Law Judge, except for the advocation of the cancellation of the first four quarterly periods from the assessment which was granted. In addition, petitioner contends that the Administrative Law Judge "has confused the double taxation issue in this sales tax proceeding with double taxation involving an income tax" (petitioner's letter brief, p. 1). Specifically, petitioner asserts that while sales tax is to be collected solely on retail sales, he is a victim of an impermissible double taxation, being taxed first on the purchase of his equipment and supplies as if he were the ultimate, or retail, consumer of these, and then again when he "resells the product" to customers (petitioner's letter brief, p. 1).

In response, the Division asks that the determination of the Administrative Law Judge be upheld in its entirety, thus, assenting to the cancellation of the first four quarterly periods of the assessment. In answer to petitioner's letter brief, the Division refutes the allegation that petitioner is a victim of an impermissible double taxation, stressing the Administrative Law Judge's admonishment that the tax on petitioner's car washing services (what petitioner refers to as the second tax upon him) is not imposed upon petitioner, but rather upon his customers. Furthermore, the Division points out that contrary to petitioner's assertions, petitioner is not reselling to his customers the tangible personal property he himself purchases and on which he is taxed as the ultimate consumer. Rather, the Division argues, these products (e.g., the soap, wax, water and equipment to dispense it) become part of petitioner's overhead costs in providing a service to his customers, the service being the commodity taxed.

Because we find that the Administrative Law Judge completely and adequately addressed the issues before him, and the issues raised on appeal are mere reassertions of these same issues, we deem it unnecessary to analyze these issues any further and we affirm the determination of the Administrative Law Judge based on his opinion. We note only that subsequent to the

Administrative Law Judge's determination, we decided Matter of Delta Sonic Car Wash Sys. (Tax Appeals Tribunal, November 14, 1991), where we also concluded that a car wash service was not a laundry service.

As a final point, however, we remind the Division that pursuant to Tax Law § 2010(5), the citation or use as precedent of the determinations of administrative law judges is prohibited (see, Division's letter brief in response, pp. 2-3 [where the Division quotes at length from the Administrative Law Judge's determination in Matter of Helmsley Enter., Division of Tax Appeals, August 17, 1990, affd Tax Appeals Tribunal, June 20, 1991]). While a discussion of or quotations from the determination of an Administrative Law Judge may be appropriate when the Tribunal has, in its decision, affirmed on the opinion of the Administrative Law Judge, it is not appropriate when the Tribunal has issued its own decision on the matter as it did in Matter of Helmsley Enter. (Tax Appeals Tribunal, June 20, 1991).

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioner Douglas H. Casement d/b/a Purple Parlor Car Wash is denied;

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

3. The petition of Douglas H. Casement d/b/a Purple Parlor Car Wash is granted to the extent indicated in conclusions of law "M" and "K" of the Administrative Law Judge, but is otherwise denied; and

4. The notices of determination and demand for payment of sales and use taxes due dated August 19, 1988 issued to Douglas Casement d/b/a Purple Parlor Car Wash are sustained as adjusted in accordance with paragraph "3" above.

DATED: Troy, New York
April 2, 1992

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

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