STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
CCB BEVERAGE, INC.	:	DETERMINATION DTA NO. 821624
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, 2001 through May 31, 2004.	:	

Petitioner, CCB Beverage, Inc., 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, 2001 through May 31, 2004.

A hearing was held before Dennis M. Galliher, Administrative Law Judge, at the offices of the Division of Tax Appeals, 641 Lexington Avenue, New York, New York, on November 20, 2007 at 10:30 A.M., with all briefs to be submitted by March 31, 2008, which date commenced the six-month period for issuance of this determination (Tax Law § 2010[3]). Petitioner appeared by DeGraff, Foy, Holt-Harris & Kunz, LLP (James H. Tully, Esq., of counsel). The Division of Taxation appeared by Daniel Smirlock, Esq. (Jennifer Murphy, Esq., of counsel).

ISSUES

I. Whether petitioner has shown error in the Division of Taxation's sales and use tax audit methodology or result by establishing that certain specific claimed nontaxable sales were improperly disallowed, or that the Division of Taxation erred by not treating a portion of additional gross sales determined upon audit as nontaxable sales.

II. Whether petitioner has established any facts or circumstances warranting the reduction or abatement of penalties.

FINDINGS OF FACT

1. During the period at issue petitioner, CCB Beverage, Inc. (CCB), made retail and wholesale sales of beer, soda, water, iced tea and a limited number of other items, including lottery tickets, ice and propane gas. Petitioner operated its business, colloquially referred to as a "beverage barn," under the name All Island Beverage out of a small store located on a busy street in Bellmore, New York.

2. On May 3, 2004, the Division of Taxation (Division) sent a letter to petitioner scheduling an appointment to commence a sales and use tax field audit of petitioner's business for the period September 1, 2001 through May 31, 2004. The Division's letter requested that all of petitioner's books and records pertaining to its sales tax liability for the specified period be available for review. Among the records specifically requested in an attached Records Requested List were the general ledger, cash receipts journal, federal income tax returns, purchase invoices, sales invoices, cash register tapes, bank statements and exemption documents.

3. The Division's auditor met with petitioner's representatives on August 4, 2004. In response to the Division's request for records petitioner provided trial balances, bank statements, some sales invoices pertaining to claimed nontaxable sales and some related exemption documents, including exempt organization certifications, resale certificates and liquor license numbers for some of its customers. Petitioner did not produce cash register tapes, a general ledger, daybook, or a cash receipts journal for any part of the audit period, or a complete set of sales invoices or exemption documents. Sales invoices were not issued to every customer, and

those sales invoices provided were, as noted, only for claimed nontaxable sales with no invoices presented with respect to taxable sales.

4. Petitioner's sales tax returns were prepared on the basis that its bank deposits were treated as its sales receipts, with petitioner estimating that approximately 25 percent of such receipts were subject to tax. This estimate was increased to approximately 30 percent of receipts toward the end of the audit period. The auditor's review revealed that gross sales per petitioner's records were not in substantial agreement with sales as reported on petitioner's federal income tax returns, with sales as reported on petitioner's sales tax returns, or with petitioner's bank deposits. The auditor also noted that petitioner's purchases exceeded its reported sales.

5. After reviewing the information provided, the Division's auditor concluded that petitioner's books and records were incomplete, unreliable and inadequate for purposes of performing a detailed audit of petitioner's sales and its sales tax liability, and that the same would thus have to be determined on the basis of indirect auditing techniques, including estimates. The Division's audit focused on two distinct areas, to wit, claimed nontaxable sales and additional gross sales, with separate audit methodologies applied in reviewing each of these areas.

NONTAXABLE SALES

6. In auditing petitioner's claimed nontaxable sales, the Division's auditor examined petitioner's sales invoices for the month of September 2003. As noted, petitioner provided sales invoices only for claimed nontaxable sales, with such invoices reflecting sales to restaurants, delicatessens, other beer distributors, fire departments and other exempt organizations. No sales invoices for taxable sales were provided. Petitioner provided a list of some customers' liquor license numbers, and a few exemption certifications and resale certificates. The auditor accepted

petitioner's claim of nontaxability in instances where a given customer's exempt status had been accepted during a prior audit of petitioner's business, where the auditor determined a properly completed resale certificate or exempt organization certification had been furnished, and where a valid liquor license existed for a customer. In this latter regard, the Division's acceptance of a valid liquor license to establish the nontaxability of a given sale was apparently premised on an October 23, 1998 letter from the former director of the Division's Sales Tax Audit Bureau. This letter affirmed the Division's policy of allowing wine and liquor distributors to make sales for resale without obtaining a Resale Certificate (Form ST-120) so long as the sale was made to a person holding a valid liquor license or permit.

7. Of the 84 different customers for whom petitioner submitted sales invoices for claimed nontaxable sales, the auditor accepted 66 as properly not subject to tax. Petitioner's failure to charge tax on its sales to the remaining 18 customers was deemed improper for lack of substantiation supporting petitioner's claim that the sale was not subject to tax. As a result, the auditor determined that $17,251.20 out of $109,650.82 in claimed nontaxable sales per invoices for September 2003 had not been substantiated as properly exempt. Since the tax rate changed during the period in question, from an initial rate of 8.5 percent (September 1, 2001 through May 31, 2003) to a subsequent rate of 8.75 percent (June 1, 2003 through May 31, 2004), the auditor calculated and applied two error rates (1.3472 and 1.3869, respectively) for claimed nontaxable sales. The auditor's application of these error rates to petitioner's claimed nontaxable sales over the course of the audit period resulted in additional taxable sales of $540,332.00, with additional sales tax due thereon in the amount of $46,479.39.

8. Review of the auditor's workpapers reveals the following information with regard to the customer and reason for disallowance of claimed nontaxable sale status:

CUSTOMER	REASON FOR DISALLOWANCE
Bagel Boss	No resale certificate
Barchatta of Hicksville	Liquor license not valid on date of sale
Brenans	Invalid liquor license
Cella Luna Pizza	No resale certificate
Hunan Gourmet	Invalid liquor license
Kelsey	Liquor license for another vendor
Kervel's Football	Exempt organization certificate instead of purchase order from public entity
Kickboxing	No resale certificate
Knights of Columbus	Liquor license for a different vendor
Lazy Pelican	Invalid liquor license
Levy Lakeside School	Exempt organization "Levy Lakeside PTA" not named on invoice
Road Rummers	Invalid liquor license
Rusty Rudder	Liquor license not issued until 2004
Soco Lounge	Invalid liquor license
Techniques	Invalid resale certificate
Terrence Hose Co.	No exemption information presented
Village Vending	Invalid resale certificate
W Fire District	Invoice name not matched to exemption information supplied.

GROSS SALES

9. In auditing petitioner's reported gross sales, the Division's auditor reviewed and utilized petitioner's purchases, per its books and records, in comparison to purchase information provided by petitioner's suppliers. Purchases verified by petitioner's suppliers totaled $4,467,762.56, to which the auditor added $58,315.37 representing purchases per petitioner's

books that could not be traced to a particular supplier. This total of audited purchases ($4,526,077.93) was reduced to allow for inventory differential and to reflect a three percent allowance for pilferage and breakage, resulting in audited net purchases of $4,338,866.19. The auditor applied a markup of 18 percent to net purchases to arrive at audited gross sales of $5,119,862.11.[1] Audited gross sales were reduced by reported gross sales ($4,506,342.36) to arrive at additional unreported gross sales of $613,509.75. All of such additional unreported gross sales were treated as additional taxable sales with sales tax calculated as due thereon in the amount of $52,740.27.

10. On November 14, 2005, the Division issued to petitioner a Notice of Determination assessing additional sales tax due for the period September 1, 2001 through May 31, 2004 in the amount of $99,219.66, plus interest and penalties (including omnibus penalty premised upon petitioner's failure to report and pay an amount in excess of 25 percent of the amount of tax required to be shown on a return).

11. Petitioner challenged the notice, and following a conference with the Division's Bureau of Conciliation and Mediation Services (BCMS), a Conciliation Order (CMS No. 211977) was issued reducing the amount assessed to $94,258.68, plus interest and penalties, based upon allowing a five percent adjustment for bottle deposits.

12. At the hearing, as well as subsequent thereto pursuant to permission granted, petitioner presented additional documentation to substantiate that certain customers were not subject to tax on their purchases from petitioner (either as customers making purchases for resale or as tax exempt entities). The Division's review of this documentation resulted in acceptance of such

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[1] The markup percentage was determined based on a 20 percent markup agreed to and applied on an earlier Division audit of petitioner's business, reduced to 18 percent to reflect petitioner's claim that a lower markup is generally applied with respect to wholesale customers.

status for five purchasers, treatment of petitioner's sales to such five purchasers as not subject to tax, and a $23,267.63 reduction of sales tax initially assessed on the nontaxable sales portion of the assessment. Specifically, the auditor had initially concluded that $17,251.20 out of the $109,650.82 in claimed nontaxable sales (per invoices) for September 2003 had not been substantiated as nontaxable sales (***see*** Finding of Fact 6). However, after review of the additional documents, the auditor reduced such disallowed amount of claimed nontaxable sales to $8,615.35. This reduction resulted in recalculated (lower) error rates, and as a result, the amount of tax assessed on claimed but disallowed nontaxable sales has been reduced from $46,479.39 to $23,211.76.

13. The five customers whose status to make purchases without paying tax was accepted are the following:

CUSTOMER	REASON FOR REVISION
Knights of Columbus-Bellmore Columbus Club, Inc.	Presented valid liquor license
Lazy Pelican-DJS Restaurant, Inc.	Presented valid liquor license
Rusty Rudder-Bayberry's Pub., Inc	Presented valid liquor license
Soco Lounge-242 B I D Pub, Inc.	Presented valid liquor license
Terrence Hose Co.	Presented valid exempt organization certificate

14. With regard to the additional gross sales portion of the audit, petitioner supplied documents to the Division concerning Meadowbrook Distributors, whose sales to petitioner were included among the $58,315.37 of "unverified" purchases per petitioner's books that could not be traced to a particular supplier. These documents showed that Meadowbrook was a distributor of Pepsi products from whom the Division had already received verification of petitioner's

purchases. The auditor thus accepted that such purchases, in the amount of $15,464.87, had in fact been counted twice in the calculation of petitioner's purchases and, by application of the markup, had resulted in additional audited gross sales (***see*** Finding of Fact 8). As a result, unverified purchases were reduced by $15,464.87 and, consequently, the amount of tax initially assessed on unreported additional gross sales was reduced (by $1,504.70) from $52,740.27 to $51,235.57.

15. After computing the foregoing reductions, tax assessed on claimed but disallowed nontaxable sales ($23,211.76), plus tax assessed on audited unreported additional gross sales ($51,235.57), totaled $74,447.33. This amount was reduced by allowing a five percent adjustment on gross sales to account for bottle deposits, such that the amount of tax remaining at issue totals $70,724.96, plus interest and penalties. The Division supplied revised audit workpapers with an explanatory cover memorandum setting forth the recalculations and resulting assessment reductions described herein, and such revised workpapers and memorandum have been accepted in evidence, without objection, as Exhibit J.

16. Petitioner continues to challenge the Division's disallowance of nontaxability with respect to its sales to 3 of the13 entities for whom nontaxable status remains denied (***compare*** Findings of Fact 8 and 13). Specifically, petitioner challenges the taxable status of its sales to Kerval's Football, Levy Lakeside PTA and "W" Fire District, as follows:[2]

> a) An Exempt Organization Certification dated May 3, 2000 and listing Bellmore-Merrick Central High School District as the exempt organization

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[2] The remaining disallowed sales were made to entities for whom petitioner was either unable to furnish a resale certificate (Form ST-120) or furnished an invalid liquor license (**see** Finding of Fact 8). No additional documentation to establish nontaxable status, such as resale certificates, exempt organization certifications, or *valid* liquor licenses in lieu of Form ST-120, was submitted by petitioner with respect to these entities. The tenor of petitioner's post-hearing briefs is clear that petitioner is not further specifically challenging the disallowance of nontaxable status with regard to these particular entities.

was presented with respect to petitioner's sales to Kerval's Football. Handwritten in the upper right corner of this certificate is the phrase "also Kennedy H.S." The sales in issue were initially disallowed upon the premise that a public entity, such as a school, must provide a governmental purchase order rather than an exempt organization certification.

b) An Exempt Organization Certification dated May 28, 2007 and listing Levy Lakeside PTA as the exempt organization was presented with respect to petitioner's sales to Lakeside School. The sale in issue was initially disallowed upon the premise that the Levy Lakeside PTA was not the purchaser named on the invoice evidencing the sale in question.

c) The record does not include any exemption documents with regard to "W" Fire District. The sales in issue were disallowed upon the premise that the auditor was unable to match the name of the purchaser to the exemption information provided. The auditor's work papers list sales to the "W" Fire District, which were not accepted as sales to an organization for which substantiation of exempt status had been furnished and also sales to the Wantagh FD Station, which sales were accepted as not subject to tax based on the results of a prior audit of petitioner's business.

CONCLUSIONS OF LAW

A. Tax Law § 1135 requires a taxpayer to maintain and make available for audit upon request such records as are sufficient to verify all transactions and the taxable or nontaxable status thereof, with the failure to maintain or make available such records, or the maintenance of inadequate records, allowing the Division to estimate the amount of such transactions and the amount of tax due. Based upon this authority, it has been well established that the Division may, in appropriate circumstances, resort to indirect auditing methods, including the use of test periods and projections therefrom, in arriving at its estimated determination of tax due. In this case, the Division's review of petitioner's records made clear that the same were not sufficient to allow for the conduct of a detailed audit (***see*** Finding of Fact 4), and petitioner, for its part, makes no assertion against this conclusion. Instead, in a case such as this where the Division's resort to indirect auditing methods is appropriate, the burden of proof lies with the taxpayer to show by

clear and convincing evidence that the selected method of audit was unreasonable or to show error in the results of the audit method as applied (***see Matter of Meskouris Bros. v. Chu***, 139 AD2d 813, 526 NYS2d 679 [1988]).

B. Petitioner raises two areas of challenge. First, petitioner contends that the Division erred by improperly disallowing claimed nontaxable sales to certain purchasers. Addressing this argument requires an examination of the specific evidence proffered by petitioner to support the claim that the particular purchasers were not subject to tax on their purchases. Second, petitioner maintains that some of the additional gross sales determined via the purchase markup portion of the audit should be deemed nontaxable sales, essentially premised on the claim that since a portion of petitioner's reported gross sales were, in fact, nontaxable sales, then the same portion (or percentage) of petitioner's unreported gross sales as determined upon audit should likewise be treated as nontaxable sales.

C. Tax Law § 1105(a) imposes a sales tax on the receipts from "every retail sale" of tangible personal property. Tax Law § 1101(b)(4)(i) defines a retail sale as a sale for any purpose "other than . . . for resale as such." Tax Law § 1132(c) sets forth a presumption that all sales receipts are subject to tax "until the contrary is established," and sets the burden of proving the contrary upon the sales tax vendor. However, the presumption of taxability created under Tax Law § 1132(c) is rebuttable (***see Matter of RAC Corp. v. Gallman***, 39 AD2d 57, 331 NYS2d 945 [1972]). Accordingly, where a vendor fails to obtain a timely or properly completed resale certificate or other certification of nontaxable status, such failure does not change the tax status of the transaction and the taxpayer retains the right to prove that such sale was in fact not subject to tax (***see*** 20 NYCRR 532.4[b][6]). Rather, the failure to obtain timely and properly completed exemption certifications merely deprives the vendor of the right to rely solely on the resale or

other certification to meet its burden (***id.***). Thus, the specific question in this case becomes whether, in light of all the facts and circumstances, petitioner has provided sufficient evidence to establish that any of its claimed but disallowed nontaxable sales, or any of its additional gross sales per audit were not subject to tax. (***see Matter of Intercontinental Audio & Video, Inc.***, Tax Appeals Tribunal, January 4, 1996). Considering all of the evidence presented, it is concluded that petitioner has not carried its burden of proving that any of the remaining specific purchasers to whom claimed nontaxable sales were made were in fact entitled to make nontaxable purchases, nor has petitioner established that any of the additional gross sales determined as the result of the markup portion of the audit may be treated as nontaxable sales.

D. With regard to petitioner's first area of challenge, the exempt organization certifications provided in substantiation of the nontaxability of the purchases made by Kerval's Football, later indicated to be Kennedy H.S., and for Lakeside School, are not sufficient in and of themselves to support a conclusion that the sales in question were nontaxable sales. The certification provided for Kennedy H.S. lists the purchaser as Bellmore-Merrick Central High School. Without more information, it is not possible to know whether the purchases were made by the high school, or by a separate booster club or other like organization and, if the latter, whether that organization in fact was properly qualified and thus entitled to make purchases without paying tax. While purchases by the Bellmore-Merrick Central High School were accepted as nontaxable, the evidence does not allow a conclusion that purchases by Kervel's or Kennedy H.S. were properly nontaxable. With regard to Lakeside School, the certification provided is for the Levy Lakeside PTA, presumably an organization separate and distinct from the Lakeside School. This certification is dated May 25, 2007, while the purchase in question was made in September 2003, and there is no evidence to support a conclusion that the Levy

Lakeside PTA (as opposed to Lakeside School) made the purchase in question in September 2003 and was properly entitled to make nontaxable purchases in September 2003. Finally, while petitioner's sales to the Wantagh FD Station were allowed as nontaxable sales based on the same treatment of sales to this entity in the Division's earlier audit of petitioner, the evidence submitted herein provides no means of tying any of the purchases by the "W" Fire District to any exemption documentation in evidence. Petitioner maintains that the purchases were made either by the Wantagh FD Station or by the Williston Park Fire Department and may have simply been labeled the "W" Fire District (as a short hand expedient), and asserts that both of these entities would be entitled to make nontaxable purchases. However, the evidence provided does not bear out that the purchases were made by either of these entities, or establish that if the purchaser was the Williston Park Fire Department such entity was properly entitled to make nontaxable purchases (i.e., notwithstanding the assumption that as a fire department it could qualify as an exempt organization, the record reflects no evidence that it did in fact hold exempt organization status for tax purposes). In sum, the evidence does not establish that any of the specifically claimed but disallowed nontaxable sales may be allowed, and thus no further adjustment to the portion of the assessment based thereon is warranted.

E. Petitioner's second area of challenge concerns the additional gross sales determined on audit as the result of the markup of additional purchases. Petitioner maintains that a portion of such additional gross sales should be treated as nontaxable sales, in the same ratio (post audit) that petitioner's reported gross sales were treated as taxable and nontaxable sales. As an initial point, it is important to note that the portion of the Division's audit concerning claimed nontaxable sales sought to verify that such claimed nontaxable sales were, in fact, nontaxable. The auditor developed an error rate with respect to such claimed nontaxable sales utilizing the

month of September 2003, as agreed between the parties, and applied the same against petitioner's claimed nontaxable sales for the audit period. The Division's audit activity in this regard was not performed to determine a taxable ratio to be applied or projected against any additional unreported gross sales found on audit. It was, rather, undertaken and applied as a means of determining the accuracy and correctness of the nontaxable sales *claimed* by petitioner.

F. Petitioner's argument with respect to the additional unreported gross sales is apparently premised on the inference that since petitioner made and reported both taxable and nontaxable sales, then all of petitioner's sales, including any unreported sales, would similarly consist of both taxable and nontaxable sales. Petitioner's assertion regarding the taxability of additional gross sales, while perhaps initially appealing and appearing logical on the surface, is rejected. The key distinction eroding petitioner's assertion is that the Division separately analyzed petitioner's *claimed* nontaxable sales and adjusted the amount thereof (in effect increased petitioner's *reported* taxable sales), and also separately analyzed petitioner's *reported* gross sales (and determined additional *un*reported gross sales which were treated, presumptively, as *un*reported taxable sales). Contrary to petitioner's position, it is not necessarily obvious that any of such additional unreported gross sales were not taxable sales, much less that such additional sales were necessarily (or even presumably) made in the same taxable versus nontaxable ratio as petitioner's reported sales. The Division is under no obligation to accept, without proof, that any of the additional unreported gross sales found on audit were not subject to sales tax.

G. Petitioner's sales and use tax returns reported gross sales and taxable sales, with the difference between the two representing petitioner's claimed (i.e., reported) nontaxable sales. Presumably, petitioner reported all of its nontaxable sales as part of its gross sales on its returns, and there is no basis to assume or accept that petitioner had more nontaxable sales than it

reported. There is no apparent incentive for a taxpayer to not report all of its nontaxable sales, and no indication that petitioner did not do so. In fact, there is a far greater incentive to report all nontaxable sales and to underreport taxable sales. The only sales invoices furnished by petitioner were sales invoices for claimed nontaxable sales, and the Division accounted for such claimed nontaxable sales in its audit review and resulting error rate as applied to petitioner's claimed nontaxable sales. This analysis and result has no impact on additional unreported gross sales, and lends no support to a claim that any of such additional sales were not taxable. Even assuming petitioner had provided substantiation establishing that all of its claimed nontaxable sales were properly not subject to tax, resulting in no error rate and no disallowed claimed nontaxable sales, the same has no bearing on additional gross sales determined on audit, and provides no support for the argument that the additional gross sales found on audit consisted of taxable and nontaxable sales. To adopt petitioner's argument would be to allow petitioner the benefit of having nontaxable sales in excess of the amount of nontaxable sales claimed on the returns it filed. Accepting such a premise ignores the presumption that all sales are taxable until the contrary is established, sanctions petitioner's method of reporting on the basis of estimates, and rewards its record keeping failures. Petitioner did not contest the purchase markup method or its application, by which the Division determined the existence of additional unreported gross sales. Further, petitioner has not explained why such sales were not reported, or furnished any evidence to show that any of such sales were not subject to tax. The difficulty facing petitioner could have been avoided by appropriate record-keeping. Instead of keeping records of all sales, petitioner chose to estimate sales on the basis of bank deposits and further chose to estimate taxable versus nontaxable sales. To accept petitioner's argument that the additional unreported sales included nontaxable sales would be to continue this method of determining tax liability by

estimate, as was done initially by petitioner and as was necessitated on audit by petitioner's failure to maintain records as required. The Division accepted petitioner's claimed nontaxable sales, to the extent substantiated, and is under no obligation to accept or allow by estimate any additional nontaxable sales beyond those claimed by petitioner.

H. The Division imposed penalty pursuant to Tax Law § 1145(a)(1)(i), for failing to pay over any tax within the time required by law, and Tax Law § 1145(a)(1)(vi), which provides that any person who omits from the total amount of tax required to be shown on the return an amount in excess of 25 percent must pay a penalty of 10 percent of the amount of the omission. Tax Law § 1145(a)(1)(iii) and (vi) provide that the Division can remit the penalty if the failure to pay over the tax was due to reasonable cause and not willful neglect.

I. Petitioner has not provided evidence or arguments sufficient to constitute reasonable cause to support abatement or cancellation of penalties. In establishing reasonable cause for penalty abatement, the taxpayer faces an onerous task (***Matter of Philip Morris, Inc.***, Tax Appeals Tribunal, April 29, 1993). Referring to the mandatory language of Tax Law § 1145 (a)(1)(i), the Tribunal stated that "the Legislature evidenced its intent that filing returns and paying tax according to a particular timetable be treated as a largely unavoidable obligation" (***Matter of MCI Communications Corp.***, Tax Appeals Tribunal, January 16, 1992). In this case, petitioner neither maintained nor produced records of all of its sales as required. Petitioner had been audited in the past, yet continued to prepare and file its tax returns premised entirely upon estimates of gross sales (based on bank deposits) and taxable sales (on no particular disclosed basis) as opposed to actual records, and made no discernable changes aimed at improving its record-keeping methods. In fact, petitioner's purchases exceeded its reported sales, its taxable sales to nontaxable sales ratio remained the same for nearly all of the period in issue (save for the

last three sales tax quarterly periods when such ratio was marginally increased), and its sales tax returns, federal income tax returns, bank deposits, and books and records were not in substantial agreement with each other. Accordingly, it is appropriate that the Division imposed penalties and the same are therefore sustained.

J. The petition of CCB Beverage, Inc. is hereby granted to the extent of the reduction made pursuant to the Conciliation Order (***see*** Finding of Fact 11) and the further reduction afforded post-hearing (***see*** Finding of Fact 15), but is otherwise denied; and the Notice of Determination dated November 14, 2005 as reduced accordingly to $70,724.96, together with penalties and interest thereon, is sustained.

DATED: Troy, New York
September 18, 2008

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE