

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SHIRLEY P. HART, OFFICER OF	:	DECISION
ASSOCIATED WATER PRODUCTS, INC.	:	
for Revision of a Determination or for Refund	:	
of Sales and Use Taxes under Articles 28 and	:	
29 of the Tax Law for the Periods Ended	:	
August 31, 1980 through February 28, 1982.	:	

Petitioner, Shirley P. Hart, 2217 Northwest Pine Lake Drive, Stuart, Florida 33494, 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 periods ended August 31, 1980 through February 28, 1982 (File No. 42287).

A hearing was held before James J. Morris, Jr., Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on June 17, 1985 at 2:45 P.M. Petitioner appeared by Ellis, Kustell & Mullenhoff (James A. Mullenhoff, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Deborah J. Dwyer, Esq., of counsel).

ISSUE

Whether the State Tax Commission has jurisdiction to conduct an administrative hearing regarding petitioner, Shirley P. Hart, with respect to her personal liability for unpaid sales taxes of Associated Water Products, Inc., and, if so, whether petitioner was a person responsible for the payment of such taxes.

FINDINGS OF FACT

1. On December 20, 1982, the Audit Division issued to petitioner, Shirley P. Hart, as officer of Associated Water Products, Inc. a Notice and Demand for Payment of Sales and Use Taxes Due, assessing tax due for the periods ended

August 31, 1980 through February 28, 1982 in the amount of \$4,498.81 plus penalty and interest accrued to the date of issuance of the notice. The notice provided on its face the following explanation as the basis for issuance, together with a detailed breakdown of the amounts claimed due for each of the quarterly periods at issue:

"[y]ou are personally liable as a responsible officer of Associated Water Products, Inc. under Sections 1131(1) and 1133 of the Tax Law.

<u>Period Ending</u>	<u>Tax Due</u>	<u>Penalty Due</u>	<u>Interest Due</u>
8/31/80	\$ -0-	\$ -0-	\$ 43.43
11/30/80	-0-	291.41	281.34
5/31/81	431.73	249.83	220.44
8/31/81	1,699.75	322.95	292.36
11/30/81	1,522.89	243.66	205.59
2/28/82	844.44	109.78	59.96"

2. The above Notice and Demand issued to petitioner stems from assessments issued against Associated Water Products, Inc., as a result of that entity's late filing and/or timely filing of sales and use tax returns for the periods at issue, which returns had no remittance of the tax and/or penalty and interest shown as due thereon.

3. The amounts of tax, penalty and interest charged to petitioner in the Notice and Demand for payment of sales and use tax due are those which had accrued against the corporation up to the date of the issuance of the notice to petitioner.

4. The Audit Division did not dispute the amounts of tax shown due on the sales and use tax returns filed by the corporation.

5. The petitioner requested that the State Tax Commission grant her an administrative hearing to determine the correctness of the liability asserted against her.

CONCLUSIONS OF LAW

A. That where as here, correct returns were submitted by the corporation lacking only the remittance of tax, penalty and interest as shown due thereon, this Commission is not empowered to determine a petitioner's liability as a "person required to collect tax" for the corporation's unpaid sales taxes in an administrative hearing [Matter of Parsons v. State Tax Commission, 34 N.Y.2d 190 (1974)].

B. That notwithstanding the enactment of Tax Law section 171 paragraph twenty-first (L. 1979, ch. 714 eff. January 1, 1980) which provided to taxpayers a right to a hearing to review taxes determined or claimed due, the courts have recently affirmed that the Tax Commission is without authority to determine, in an administrative hearing, a corporate officer's liability as a person required to collect tax. [Matter of William R. Hall v. State Tax Commission, 108 A.D.2d 488 (Third Dept. 1985)].

C. That notwithstanding petitioner's request for a hearing and redetermination of the issue of her liability for taxes without objection to the forum, jurisdiction may not be conferred when none exists.

D. That there being no authority to determine petitioner's liability at an administrative hearing, the petition is dismissed.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 17 1986

Rodrich W. Carr
PRESIDENT

Francis R. Koehn
COMMISSIONER

Mark J. Smith
COMMISSIONER