

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL ANNARELLA,
OFFICER OF EAST MEADOW SHELL, INC.

DECISION

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, 1979
through November 30, 1981.

Petitioner, Michael Annarella, officer of East Meadow Shell, Inc., 5 Neil Drive, Lake Grove, New York 11755, 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 March 1, 1979 through November 30, 1981 (File No. 45381).

A hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 3, 1985 at 10:45 A.M., with all briefs to be submitted by January 17, 1986. Petitioner appeared by Lillian M. Cronin, Esq. and John R. Sini, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

ISSUES

I. Whether petitioner's liability for so much of the taxes in issue for the periods ended February 29, 1980 and prior thereto was barred by the statute of limitations.

II. Whether petitioner was a person required to collect sales tax within the meaning and intent of sections 1131(1) and 1133(a) of the **Tax** Law for the quarter ended May 31, 1979.

FINDINGS OF FACT

1. On April 20, 1983, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner Michael Annarella, as officer of East Meadow Shell, Inc. ("East Meadow"), in the amount of \$13,821.74, plus penalty of \$3,402.81 and interest of \$4,901.39, for a total due of \$22,125.94 for the period March 1, 1979 through November 30, 1981.

2. On June 15, 1982, East Meadow, by its president, Michael Marinello, executed a consent extending the period of limitation for assessment of sales and use taxes for the period March 1, 1979 through February 28, 1980 to June 20, 1983. Petitioner did not execute a consent extending the period of limitation as to his personal liability nor was he an officer of East Meadow at the time it executed its consent.

3. Petitioner's assessment was reduced to \$5,592.37 plus penalty and interest at a pre-hearing conference **as** a result of information supplied by East Meadow. Petitioner left the corporation on November 30, 1981 and accordingly the Audit Division assessed him for only those quarters during which he was an officer.

4. Petitioner does not contest the amount of the assessment; rather, he maintains that the assessment for the period March 1, 1979 through February 29, 1980 was beyond the period of limitation for assessment despite the execution of the consent extending the period by East Meadow. Petitioner argues that the consent does not apply to him since he had left East Meadow prior to the consent's execution.

5. Petitioner also maintains that he is not liable for the quarter ended May 31, 1979 because he did not become an officer of East Meadow until May 29, 1981. The only evidence of this starting date was a statement in an affidavit

from petitioner. Petitioner did not appear to testify at the hearing nor did he submit any other documentation indicating the date he became an officer of East Meadow.

CONCLUSIONS OF LAW

A. That section 1147(c) of the Tax Law provides, in part, **as** follows:

"(c) Where, before the expiration of the period prescribed herein for the assessment of an additional tax, a taxpayer has consented in writing that such period be extended the amount of such additional tax due may be determined at any time within such extended period. The period so extended may be further extended by consents in writing made before the expiration of the extended period..."

B. That a consent extending the period of limitation executed by a corporation cannot bind a former officer who was not in any way affiliated with the corporation at the time such consent was executed. Matter of Oakley M. Gentry, III, State Tax Commission, September 16, 1983. Since the consent in the instant matter was executed by East Meadow after petitioner had left the corporation and since petitioner did not personally execute a consent, no assessment may be made with respect to petitioner for the period March 1, 1979 through February 29, 1980. The assessment was timely for the remaining periods during which petitioner was an officer of East Meadow. Taking into account the reductions made at the pre-hearing conference, petitioner's liability for the period March 1, 1980 through November 30, 1981 **is** reduced to \$3,215.03 plus penalty and interest.

C. That in view of Conclusion of Law "B", it is unnecessary to rule on the second issue raised by petitioner.


D. That the petition of Michael Annarella, as officer of East Meadow Shell, Inc., is granted to the extent indicated in Conclusion of Law "B"; that the Audit Division is directed to modify the Notice of Determination and Demand


for Payment of Sales and Use Taxes Due issued April 20, 1983 accordingly; and that, except as so granted, the petition is in all other respects denied.

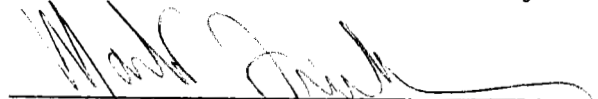
DATED: Albany, New York

STATE TAX COMMISSION

JAN 24 1986


PRESIDENT


COMMISSIONER


COMMISSIONER