

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH SHAFRON,
OFFICER OF SHAFRON SHOE CORP.

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 Ended November 30, :
1978.

Petitioner, Joseph Shafron, Officer of Shafron Shoe Corp., 1410 Sylvia Lane, East Meadow, New York 11554, 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 ended November 30, 1978 (File No. 45410).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 15, 1987 at 3:00 P.M. Petitioner appeared ~~pro se~~. The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether the State Tax Commission has jurisdiction to proceed administratively against petitioner, Joseph Shafron, with respect to his personal liability for unpaid sales taxes of Shafron Shoe Corp.

FINDINGS OF FACT

1. On May 20, 1983, the Audit Division issued to the petitioner, Joseph Shafron, officer of Shafron Shoe Corp., a Notice and Demand for Payment of Sales and Use Taxes Due assessing sales tax due for the period ended November 30,

1978 in the amount of \$6,190.08 plus penalty and interest accrued to the date of issuance of the notice.

2. The above notice and demand issued to petitioner stems from the sales and use tax return filed by Shafron Shoe Corp. for the period ended November 30, 1978 which was signed by petitioner with the title of president. The check which accompanied said return in full payment of the amount shown due thereon, \$6,190.08, was subsequently returned unpaid due to insufficient funds by The Chase Manhattan Bank, N.A.

3. The Audit Division did not dispute the amount of tax shown due on the sales and use tax return filed by the corporation.

4. Petitioner requested that the State Tax Commission grant him an administrative hearing in order that he might present evidence which he claims will show that the sales taxes at issue were paid in a timely manner.

CONCLUSIONS OF LAW

A. That where, as here, a correct return was submitted by the corporation and the check in payment of the amount shown due thereon was returned due to insufficient funds necessitating the issuance of a notice and demand, 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 NY2d 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 where correct returns have been filed, the Tax Commission is without authority to determine, in an administrative hearing, a corporate

officer's liability for unpaid taxes (Matter of Hall v. State Tax Commission,
108 AD2d 488 [Third Dept. 1985]).


C. That notwithstanding petitioner's request for a hearing 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

APR 17 1987


PRESIDENT


COMMISSIONER


COMMISSIONER