

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL COHEN

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 February 28,
1981 through May 31, 1982.

Petitioner, Paul Cohen, 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 February 28, 1981 through May 31, 1982 (File No. 45923).

A formal hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 15, 1985 at 9:30 A.M. Petitioner appeared by Bertram Zweibon, Esq. The Audit Division appeared by John P. Dugan, Esq. (William Fox Esq., of counsel).

ISSUES

Whether petitioner, Paul Cohen, was a person required to collect tax on behalf of Standard Beauticians Supply, Inc. and is therefore personally liable for sales and use taxes unpaid by the corporation.

FINDINGS OF FACT

1. On May 20, 1983, the Audit Division issued to petitioner, Paul Cohen, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due for the period December 1, 1980 through May 31, 1982 assessing taxes in the amount of \$13,517.76, plus penalty of \$5,191.92 and interest of \$4,169.91 for a total

due of \$22,879.59. The tax assessed was determined to be due in accordance with section 1138(a) of the Tax Law.

2. Standard Beauticians Supply, Inc. ("Standard") commenced operations in October 1979 and was in the business of buying and selling health and beauty aids.

3. Harvey B. Yarvis was a fifty percent shareholder and President of Standard. Mr. Yarvis received a salary from Standard and was primarily responsible for its day-to-day operations.

4. Paul Cohen is a partner in the law firm of Cohen & Lusthaus. Since 1971, he has devoted himself fulltime to the practice of law. Mr. Cohen was also a fifty percent stockholder and was Vice-President and Secretary of Standard. In that capacity, he had weekly telephone conversations with Harvey Yarvis during which the two men discussed financial matters and the overall business operations of the corporation. Mr. Cohen negotiated loans for the corporation; he discussed Standard's tax returns with the accountant who prepared them; he had the authority to hire and fire employees and actively participated in the decision to hire Allen Haikins, the head of the corporation's accounting department. Although authorized to do so, he never actually signed corporate checks, nor did he prepare or sign tax returns.

CONCLUSIONS OF LAW

A. That section 1133, subdivision (a) of the Tax Law places personal liability for the taxes imposed, collected or required to be collected under Article 28 upon "every person required to collect any tax" imposed by said article. Section 1131, subdivision (1) furnishes the following definition for the term "persons required to collect tax":

"'Persons required to collect tax' or 'person required to collect any tax imposed by this article' shall include:

every vendor of tangible personal property or services; every recipient of amusement charges; and every operator of a hotel. Said terms shall also include any officer or employee of a corporation or of a dissolved corporation who as such officer or employee is under a duty to act for such corporation in complying with any requirement of this article and any member of a partnership."

The resolution of whether Paul Cohen was a person required to collect sales and use taxes turns on the particular facts and circumstances involved. The holding of corporate office does not, per se, impose personal liability upon the office holder. Relevant considerations include the officer's day-to-day responsibilities in the corporation, his knowledge of and involvement in the financial affairs and management of the corporation, and whether he prepared and filed the sales tax returns. Vogel v. Dept. of Taxation and Finance, 98 Misc. 2d 222 (Sup. Ct. Monroe Co.); Chevlowe v. Koerner, 95 Misc. 2d 388 (Sup. Ct. Queens Co.); 20 NYCRR 526.11(b).

B. That petitioner Paul Cohen, although not actively involved in the day-to-day management of Standard Beauticians Supply, Inc., was under a duty to act for Standard in complying with the requirements of Article 28. Paul Cohen was a fifty percent stockholder in Standard; he was the Vice-President and Secretary of the corporation; he was authorized to sign checks on the corporate account; he negotiated loans on behalf of the corporation; he shared authority to hire and fire employees; he was routinely consulted on financial matters and had weekly conversations with the corporate president regarding overall business operations. Mr. Cohen did not personally prepare or sign tax returns; however, the delegation of such duties does not relieve him of his responsibilities. Consequently, Mr. Cohen is properly held personally liable for taxes due from Standard Beauticians Supply, Inc.

C. That the petition of Paul Cohen is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued May 20, 1983 is sustained.

DATED: Albany, New York

OCT 03 1985

STATE TAX COMMISSION

Rodriguez W. C. L.
PRESIDENT

Francis P. K. O'Neil
COMMISSIONER

Mark J. Smith
COMMISSIONER