

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
DONALD F. LAKS, OFFICER OF	:	DECISION
DON LAKS VOLKSWAGON, INCORPORATED	:	
and	:	
LAKS CHEVROLET CORPORATION	:	
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, 1982 and November 30, 1982.	:	

Petitioner, Donald F. Laks, 7310 East Quaker Road, Orchard Park, New York, 14127, 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, 1982 and November 30, 1982 (File No. 46347 and 47811).

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 March 14, 1985 at 1:15 P.M., with all briefs to be submitted by May 15, 1985. Petitioner appeared by Ralph J. Gregg, Esq. 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, Donald F. Laks, with respect to his personal liability for unpaid sales taxes of Don Laks Volkswagon, Incorporated and Laks Chevrolet Corporation and, if so, whether petitioner was a person responsible for the payment of such taxes.

FINDINGS OF FACT

1. On June 20, 1983, the Audit Division issued to petitioner, Donald F. Laks, as officer of Don Laks Volkswagon, Incorporated, a Notice and Demand for Payment of Sales and Use Taxes Due, for the periods ended August 31, 1982 and November 30, 1982 in the amount of \$15,781.63 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 assessed for each of the quarterly periods at issue:

"[y]ou are personally liable as a responsible officer of Don Laks Volkswagon 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>
08/31/82	\$5,540.51	\$664.87	\$478.25
11/30/82	\$10,241.12	\$1,114.84	\$641.90

'THE TAX ASSESSED HEREIN HAS BEEN ESTIMATED AND/OR DETERMINED TO BE DUE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 1138 OF THE TAX LAW AND MAY BE CHALLENGED THROUGH THE HEARING PROCESS BY THE FILING OF A PETITION WITHIN 90 DAYS.'"

2. The above Notice and Demand issued to petitioner (Finding of Fact "1") stems from assessments issued against Don Laks Volkswagon, Incorporated, as a result of that entity's timely filing of sales and use tax returns for the periods at issue, which returns had no remittance of the tax shown as due thereon.

3. On August 20, 1983, the Audit Division issued to petitioner, Donald F. Laks, as officer of Laks Chevrolet Corporation, a Notice and Demand for Payment of Sales and Use Taxes Due, for the period ended November 30, 1982 in the amount of \$20,539.03 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 assessed for the quarterly period at issue: "[y]ou are personally liable as a responsible officer of Laks Chevrolet Corporation under section 1131(1) and 1133 of the Tax Law."

<u>Period Ending</u>	<u>Tax Due</u>	<u>Penalty Due</u>	<u>Interest Due</u>
11/30/82	\$20,539.03	\$2,882.39	\$2,007.56

'THE TAX ASSESSED HEREIN HAS BEEN ESTIMATED AND/OR DETERMINED TO BE DUE IN ACCORDANCE WITH THE PROVISIONS OF SECTION 1138 OF THE TAX LAW AND MAY BE CHALLENGED THROUGH THE HEARING PROCESS BY THE FILING OF A PETITION WITHIN 90 DAYS.'

4. The above Notice and Demand issued to petitioner (Finding of Fact "3") stems from an assessment issued against Laks Chevrolet Corporation, as a result of that entity's timely filing of a sales and use tax return for the period at issue, which return had no remittance of the tax shown as due thereon.

5. That the amounts of tax, penalty and interest charged to Donald Laks in the notices and demands for payment of sales and use tax due are those which had accrued against the corporate entities up to the date of the issuance of the notices to petitioner.

6. That the Audit Division did not dispute the amounts of tax shown due on the sales and use tax returns filed by the corporations.

7. That petitioner presented no evidence or testimony in support of his petition, relying solely upon the legal argument that under the particular factual circumstances, the State Tax Commission is without authority to hold an administrative hearing to determine petitioner's liability as a person required to collect tax. A determination by this body that no administrative remedy lies in this situation would remove a potential obstacle to judicial action by petitioner.

8. Petitioner submitted proposed findings of fact 1-6 which are substantially incorporated in Findings of Fact 1-6 herein.

CONCLUSIONS OF LAW

A. That where as here, timely and correct returns were submitted lacking only the remittance of tax as shown as due thereon, this Commission is not empowered to determine 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); Matter of William R. Hall v. State Tax Commission, 108 A.D.2d 488 (Third Dept. 1985)].

B. That since this Commission does not have authority to determine petitioner's liability at an administrative hearing, the petition is dismissed.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 28 1986


PRESIDENT


COMMISSIONER


COMMISSIONER