

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
	:	
of	:	
	:	
FRANCIS P. CEGLIA & PAUL R. SMITH	:	DECISION
D/B/A MAIN SHERIDAN AUTOMOTIVE	:	
	:	
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 September 1, 1980	:	
through May 31, 1982.	:	

---

Petitioner, Francis P. Ceglia & Paul R. Smith, d/b/a Main Sheridan Automotive, 176 Quantico Court, Williamsville, New York 14221, 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 September 1, 1980 through May 31, 1982 (File No. 50757).

A hearing was held before James J. Morris, Jr., Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York on May 1, 1986 at 2:45 P.M., with all briefs to be submitted by June 5, 1986. Petitioner Francis P. Ceglia appeared by Anthony J. Palmer, P.A. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

#### ISSUE

Whether Francis P. Ceglia is personally liable for sales taxes due from Main Sheridan Automotive for the period September 1, 1980 through May 31, 1982.

#### FINDINGS OF FACT

1. On December 20, 1983, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Francis P. Ceglia & Paul R. Smith, d/b/a Main Sheridan Automotive ("Main") for taxes due of \$27,298.25, plus penalty of \$6,822.69 and interest of \$9,705.84, for a total of \$43,826.78.

Said notice resulted from an audit of Main's books and records for the period September 1, 1980 through May 31, 1982.

2. The assessment was issued against the two (2) aforesaid individuals, d/b/a Main. However, Mr. Palmer appeared at the hearing solely on behalf of Francis P. Ceglia (hereinafter "petitioner"). No representation was made on behalf of Paul R. Smith or Main. Accordingly, the issue herein is restricted to the assessment insofar as it relates to petitioner.

3. Petitioner alleges that he was not a person required to collect the sales and use taxes at issue since he sold his partnership interest in Main prior to commencement of the audit in July 1982 and the agreement entered into contained a clause which rendered him harmless from any debts and liabilities of Main.

4. Prior to June 1, 1981, petitioner was a partner in Main. On June 1, 1981, petitioner entered into an agreement with Paul R. Smith whereby they severed their relationship as partners and petitioner sold all of his right, title and interest in Main to Mr. Smith for \$12,500.00. Said agreement provided, inter alia, that:

"Smith will assume all of the debts and liabilities of the business of Main-Sheridan Automotive and save Ceglia harmless from any of said debts and liabilities."

#### CONCLUSIONS OF LAW

A. That section 1133(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 (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." (Emphasis supplied).

B. That the provision in the agreement between petitioner and Mr. Smith, relating to liabilities and debts, was effective solely between the parties to such agreement and in no way influenced petitioner's liability under the Tax Law.

C. That petitioner was a partner in Main during the period September 1, 1980 through May 31, 1981. Accordingly, for said period he was a person required to collect and pay over sales and use taxes within the meaning and intent of sections 1131(1) and 1133(a) of the Tax Law. Therefore, for said period he is personally liable for the taxes assessed. Since he was not a partner during the balance of the period at issue, he is not personally liable for the taxes assessed for such period.

D. That the petition of Francis P. Ceglia & Paul R. Smith, d/b/a Main Sheridan Automotive, is granted to the extent provided in Conclusion of Law "C", supra, only insofar as it relates to Francis P. Ceglia. Except as so stated, said petition is, in all other respects, denied.


E. That the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 20, 1983 is to be modified solely with respect to the liability of Francis P. Ceglia (see Conclusion of Law "C", supra), and except for such modification said notice is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 15 1986.

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER