

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

EMRON ATAKHANIAN

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 June 1, 1980  
through February 28, 1983.

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Petitioner, Emron Atakhanian, 42-22 213th Street, Bayside, New York 11361, 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 June 1, 1980 through February 28, 1983 (File No. 54373).

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 2, 1985 at 1:15 P.M. Petitioner appeared by his son, Edward Atakhanian. The Audit Division appeared by John P. Dugan, Esq. (Lawrence A. Newman, Esq., of counsel).

#### ISSUE

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.

#### FINDINGS OF FACT

1. On March 7, 1984, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Emron Atakhanian as vice president of Pronto Service Station, Inc. ("Pronto"), in the amount of \$119,108.84, plus fraud penalty of \$59,554.43 and interest of \$38,338.28,

for a total due of \$217,001.55 for the period June 1, 1980 through February 28, 1983.

2. Petitioner began working for Pronto in or about January, 1982. Pronto sold gasoline and provided automobile repair services. Petitioner was employed solely as a mechanic. He never pumped gas or collected any money from customers. Petitioner repaired the cars and then informed the president of Pronto, Kawous Balazadeh, of what was done and Mr. Balazadeh made out the bill for the customer and collected the money.

3. Petitioner did not sign any checks issued by Pronto and had no authority to do so. He did not sign any of Pronto's tax returns nor did he participate in the preparation of any returns. Petitioner did not have access to the books and records of Pronto; Mr. Balazadeh carried the records in a suitcase which he took home with him every day and to which only he had access.

4. On audit, the Audit Division included petitioner as an officer of Pronto based on his name appearing as a stockholder on a Federal tax return. Petitioner was not identified as a corporate officer on that return or any other corporate document. Additionally, the corporate records indicate and the Audit Division conceded that petitioner was not a stockholder of Pronto; Mr. Balazadeh was the sole stockholder. It is unclear why petitioner was listed as a stockholder on the Federal tax return; however, Mr. Balazadeh had offered to make petitioner a "partner" in Pronto if petitioner paid him \$40,000.00. Petitioner did not pay Mr. Balazadeh the money and before he was able to raise enough money to buy into the corporation, Mr. Balazadeh decided to sell the business. In August, 1982, petitioner began collecting unemployment insurance.

CONCLUSIONS OF LAW

A. That section 1133(a) of the Tax Law provides, in part, that every person required to collect the taxes imposed under the Sales Tax Law is also personally liable for the tax imposed, collected, or required to be collected under such law. Section 1131(1) of the Tax Law defines "persons required to collect tax" as used in section 1133(a) to include any officer or employee of a corporation, or a dissolved corporation, who as such officer or employee is under a duty to act for the corporation in complying with any requirement of the Sales Tax Law.

B. That 20 NYCRR 526.11(b)(2) describes an officer or employee who is under a duty to act for the corporation, as a person who is authorized to sign a corporation's tax returns or is responsible for maintaining the corporate books, or is responsible for the corporation's management. Other "[i]ndicia of this duty...include factors...such as the officer's day-to-day responsibilities and involvement with the financial affairs and management of the corporation" and "the officer's duties and functions..." (Vogel v. New York State Department of Taxation and Finance, 98 Misc.2d 222, 225).

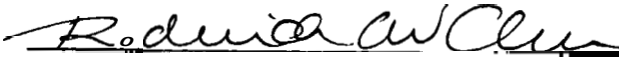
C. That inasmuch as petitioner worked only as a mechanic, did not participate in the day-to-day running of Pronto, did not sign corporate checks or tax returns, was not responsible for maintaining the corporate books, and was not responsible for the corporation's management, he was not a person required to collect tax within the meaning and intent of sections 1131(1) and 1133(a) of the Tax Law.

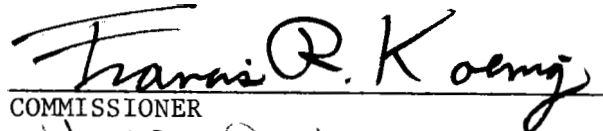
D. That the petition of Emron Atakhanian is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 7, 1984 is cancelled.

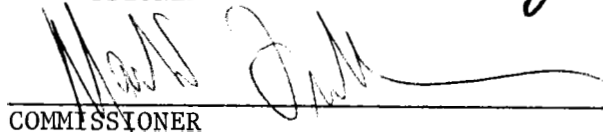
DATED: Albany, New York

STATE TAX COMMISSION

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PRESIDENT

  
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★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

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Emron Otakhanian	
Street and No.	
1747 21st St	
P.O. State and ZIP Code	
42nd St NY 10018	
Postage	\$
Certified Fee	
Special Delivery Fee	
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Return Receipt Showing to whom and Date Delivered	
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TOTAL Postage and Fees	\$
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PS Form 3800, Feb. 1982

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Edward Markham	
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Bayside NY 11361	
Postage	\$
Certified Fee	
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Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
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