

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Emron Atakhanian : AFFIDAVIT OF MAILING  
V.P. of Pronto Service Station, Inc. :

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales & Use Tax :  
under Article(s) 28 & 29 of the Tax Law :  
for the Period 6/1/80 - 2/28/83.

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State of New York :

ss.:

County of Albany :

Doris E. Steinhardt, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 18th day of February, 1986, he/she served the within notice of Decision by certified mail upon Emron Atakhanian, V.P. of Pronto Service Station, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Emron Atakhanian  
V.P. of Pronto Service Station, Inc.  
42-22 213th St.  
Bayside, NY 11361

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
18th day of February, 1986.

Doris E. Steinhardt

John Corry  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Emron Atakhanian : AFFIDAVIT OF MAILING  
V.P. of Pronto Service Station, Inc.

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales & Use Tax :  
under Article(s) 28 & 29 of the Tax Law :  
for the Period 6/1/80 - 2/28/83.

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State of New York :  
ss.:  
County of Albany :

Doris E. Steinhardt, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 18th day of February, 1986, he served the within notice of Decision by certified mail upon Eddward Atakhanian, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eddward Atakhanian  
42-22 213th Street  
Bayside, NY 11361

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
18th day of February, 1986.

Doris E. Steinhardt

[Signature]  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

February 18, 1986

Emron Atakhanian  
V.P. of Pronto Service Station, Inc.  
42-22 213th St.  
Bayside, NY 11361

Dear Mr. Atakhanian:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Eddward Atakhanian  
42-22 213th Street  
Bayside, NY 11361  
Taxing Bureau's Representative

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.

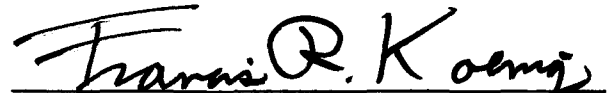
D. That the petition of Emron Atakhanian is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 7, 1984 is cancelled.


DATED: Albany, New York

STATE TAX COMMISSION

FEB 18 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

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**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to <i>Emron Ota Khanian</i>	
Street and No. <i>DP of Prath Service Inc</i>	
P.O. State and ZIP Code <i>72-22 2134 St</i>	
Postage <i>Baseide NY 11361</i>	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

P 684 313 274

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to <i>Edward Markham</i>	
Street and No. <i>42-22 2134 St</i>	
P.O. State and ZIP Code <i>Baseide NY 11361</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	