

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Shirley P. Hart :
Officer of Associated Water Products, Inc. : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Periods Ended 8/31/80-2/28/82. :

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 17th day of January, 1986, he served the within notice of Decision by certified mail upon Shirley P. Hart, Officer of Associated Water Products, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Shirley P. Hart
Officer of Associated Water Products, Inc.
2317 N.W. Pine Lake Dr.
Stuart, FL 33494

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
17th day of January, 1986.

David Parchuck

Arnie O'Hagan

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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under Article 28 & 29 of the Tax Law for the :
Periods Ended 8/31/80-2/28/82. :

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

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 17th day of January, 1986, he served the within notice of Decision by certified mail upon James A. Mullenhoff, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James A. Mullenhoff
Ellis, Kustell & Mullenhoff
16600 Kensington Ave.
Buffalo, NY 14215

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
17th day of January, 1986.

David Parchuck

James A. Mullenhoff
Authorized to administer oaths
pursuant to Tax Law section 174

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

January 17, 1986

Shirley P. Hart
Officer of Associated Water Products, Inc.
2317 N.W. Pine Lake Dr.
Stuart, FL 33494

Dear Ms. Hart:

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
James A. Mullenhoff
Ellis, Kustell & Mullenhoff
16600 Kensington Ave.
Buffalo, NY 14215
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SHIRLEY P. HART, OFFICER OF	:	DECISION
ASSOCIATED WATER PRODUCTS, INC.	:	
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, 1980 through February 28, 1982.	:	

Petitioner, Shirley P. Hart, 2217 Northwest Pine Lake Drive, Stuart, Florida 33494, 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, 1980 through February 28, 1982 (File No. 42287).

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 June 17, 1985 at 2:45 P.M. Petitioner appeared by Ellis, Kustell & Mullenhoff (James A. Mullenhoff, Esq., of counsel). 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, Shirley P. Hart, with respect to her personal liability for unpaid sales taxes of Associated Water Products, Inc., and, if so, whether petitioner was a person responsible for the payment of such taxes.

FINDINGS OF FACT

1. On December 20, 1982, the Audit Division issued to petitioner, Shirley P. Hart, as officer of Associated Water Products, Inc. a Notice and Demand for Payment of Sales and Use Taxes Due, assessing tax due for the periods ended

August 31, 1980 through February 28, 1982 in the amount of \$4,498.81 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 claimed due for each of the quarterly periods at issue:

"[y]ou are personally liable as a responsible officer of Associated Water Products, 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>
8/31/80	\$ -0-	\$ -0-	\$ 43.43
11/30/80	-0-	291.41	281.34
5/31/81	431.73	249.83	220.44
8/31/81	1,699.75	322.95	292.36
11/30/81	1,522.89	243.66	205.59
2/28/82	844.44	109.78	59.96"

2. The above Notice and Demand issued to petitioner stems from assessments issued against Associated Water Products, Inc., as a result of that entity's late filing and/or timely filing of sales and use tax returns for the periods at issue, which returns had no remittance of the tax and/or penalty and interest shown as due thereon.

3. The amounts of tax, penalty and interest charged to petitioner in the Notice and Demand for payment of sales and use tax due are those which had accrued against the corporation up to the date of the issuance of the notice to petitioner.

4. The Audit Division did not dispute the amounts of tax shown due on the sales and use tax returns filed by the corporation.

5. The petitioner requested that the State Tax Commission grant her an administrative hearing to determine the correctness of the liability asserted against her.

CONCLUSIONS OF LAW

A. That where as here, correct returns were submitted by the corporation lacking only the remittance of tax, penalty and interest as shown due thereon, this Commission is not empowered to determine a 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)].

B. That notwithstanding the enactment of Tax Law section 171 paragraph twenty-first (L. 1979, ch. 714 eff. January 1, 1980) which provided to taxpayers a right to a hearing to review taxes determined or claimed due, the courts have recently affirmed that the Tax Commission is without authority to determine, in an administrative hearing, a corporate officer's liability as a person required to collect tax. [Matter of William R. Hall v. State Tax Commission, 108 A.D.2d 488 (Third Dept. 1985)].

C. That notwithstanding petitioner's request for a hearing and redetermination of the issue of her liability for taxes without objection to the forum, jurisdiction may not be conferred when none exists.

D. That there being no authority to determine petitioner's liability at an administrative hearing, the petition is dismissed.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 17 1986

Rodrick W. Allen
PRESIDENT

Francis R. Koelmig
COMMISSIONER

[Signature]
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>James A. Muckelhoff</i>	
	Street and No. <i>10660 Kensington Ave</i>	
	P.O., State and ZIP Code <i>Bellevue WA 98005</i>	
	Postage <i>\$7.14</i>	<i>25</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		

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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>Shirley P. Shad Officer</i>	
	Street and No. <i>10000 1st Ave NW</i>	
	P.O., State and ZIP Code <i>3317 N.W. Lincoln Rd</i>	
	Postage <i>\$4.33</i>	<i>94</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		