

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Joseph Shafron : AFFIDAVIT OF MAILING  
Officer of Shafron Shoe Corp. :  
:  
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 Ended 11/30/78. :

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State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, 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 17th day of April, 1987, he/she served the within notice of Decision by certified mail upon Joseph Shafron, Officer of Shafron Shoe Corp. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph Shafron  
Officer of Shafron Shoe Corp.  
1410 Sylvia Lane  
East Meadow, NY 11554

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 April, 1987.

David Parchuck  
Authorized to administer oaths  
pursuant to Tax Law section 174

Janet M. Snay

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

April 17, 1987

Joseph Shafron  
Officer of Shafron Shoe Corp.  
1410 Sylvia Lane  
East Meadow, NY 11554

Dear Mr. Shafron:

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  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
JOSEPH SHAFRON,	:	DECISION
OFFICER OF SHAFRON SHOE CORP.	:	
	:	
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 Ended November 30,	:	
1978.	:	

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Petitioner, Joseph Shafron, Officer of Shafron Shoe Corp., 1410 Sylvia Lane, East Meadow, New York 11554, 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 ended November 30, 1978 (File No. 45410).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 15, 1987 at 3:00 P.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether the State Tax Commission has jurisdiction to proceed administratively against petitioner, Joseph Shafron, with respect to his personal liability for unpaid sales taxes of Shafron Shoe Corp.

FINDINGS OF FACT

1. On May 20, 1983, the Audit Division issued to the petitioner, Joseph Shafron, officer of Shafron Shoe Corp., a Notice and Demand for Payment of Sales and Use Taxes Due assessing sales tax due for the period ended November 30,

1978 in the amount of \$6,190.08 plus penalty and interest accrued to the date of issuance of the notice.

2. The above notice and demand issued to petitioner stems from the sales and use tax return filed by Shafron Shoe Corp. for the period ended November 30, 1978 which was signed by petitioner with the title of president. The check which accompanied said return in full payment of the amount shown due thereon, \$6,190.08, was subsequently returned unpaid due to insufficient funds by The Chase Manhattan Bank, N.A.

3. The Audit Division did not dispute the amount of tax shown due on the sales and use tax return filed by the corporation.

4. Petitioner requested that the State Tax Commission grant him an administrative hearing in order that he might present evidence which he claims will show that the sales taxes at issue were paid in a timely manner.

#### CONCLUSIONS OF LAW

A. That where, as here, a correct return was submitted by the corporation and the check in payment of the amount shown due thereon was returned due to insufficient funds necessitating the issuance of a notice and demand, 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 NY2d 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 where correct returns have been filed, the Tax Commission is without authority to determine, in an administrative hearing, a corporate

officer's liability for unpaid taxes (Matter of Hall v. State Tax Commission, 108 AD2d 488 [Third Dept. 1985]).

C. That notwithstanding petitioner's request for a hearing 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

APR 17 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER