

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition :  
of :  
**ARTHUR JOHNSON** : DETERMINATION  
 : DTA NO. 826174  
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 December 1, 2005 through August 31, 2006 and :  
December 1, 2006 through February 28, 2007. :  
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Petitioner, Arthur Johnson, 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 December 1, 2005 through August 31, 2006 and December 1, 2006 through February 28, 2007.

A hearing was held before Donna M. Gardiner, Administrative Law Judge, in New York, New York, on September 15, 2015 at 1:15 p.m., with all briefs to be submitted by May 20, 2016, which date began the six-month period for the issuance of this determination. Petitioner appeared pro se. The Division of Taxation appeared by Amanda Hiller, Esq. (Adam L. Roberts, Esq., of counsel).

***ISSUE***

Whether petitioner was personally liable for sales tax due on behalf of A & J Security Patrol Agency, Inc.

***FINDINGS OF FACT***

1. The Division of Taxation (Division) conducted a review of an entity named A & J Security Patrol Agency, Inc. (A & J). The auditor reviewed filed returns, forms W-2, certificates

of authority as well as other documents and determined that petitioner, Arthur Johnson, was a responsible officer for the periods in issue.

2. The Division's records indicated that A & J filed untimely forms ST-100, sales tax returns, and did not remit the stated sales tax due as reflected on the forms.

3. Notice of Determination, No. L-027943599, dated November 20, 2006, was issued to petitioner for sales and use taxes due for the period ending February 28, 2006 in the amount of \$1,974.49 plus interest and penalty. The tax amount of \$1,974.49 was the exact amount of sales tax reported due on line 18 of form ST-100 filed by A & J for the period ending February 28, 2006.

4. Notice of Determination, No. L-027943600, dated November 20, 2006, was issued to petitioner for sales and use taxes due for the period ending May 31, 2006 in the amount of \$3,425.00 plus interest and penalty. The tax amount of \$3,425.00 was the exact amount of sales tax due reported on line 18 of form ST-100 filed by A & J for the period ending May 31, 2006.

5. Notice of Determination, No. L-027943598, dated November 20, 2006, was issued to petitioner for sales and use taxes due for the period ending August 31, 2006 in the amount of \$2,712.50 plus interest and penalty. The tax amount of \$2,712.50 was the exact amount of sales tax reported due on line 18 of form ST-100 filed by A & J for the period ending August 31, 2006.

6. Notice of Determination, No. L-030896700, was issued to petitioner dated November 3, 2008 for sales and use taxes due for the period ending February 28, 2007 in the amount of \$1,512.00 plus interest and penalty. The tax amount of \$1,512.00 was the exact amount of sales tax reported on line 17 of form ST-100 filed by A & J for the period ending February 28, 2007.

7. The Division issued three additional assessments, Nos. L-030896697, L-030896698 and L-030896699, that were protested by the petition in this matter. All three assessments have been canceled and are no longer at issue.

8. A & J was in the business of selling protective services in New York. Petitioner testified that he was an officer for the corporation. Petitioner stated that he was not an owner, but was hired to run the day-to-day operations of the business.

9. Petitioner is a certified New York State instructor for security guards. He registered the company in his name on behalf of the owners, due to his expertise in the field.

10. Petitioner testified that Arlene Perry was a retired police officer who was the bookkeeper for A & J. Petitioner believes Ms. Perry was an owner, but he cannot be certain. It is noted that, on three of the four forms ST-100 in evidence, petitioner is listed as owner/CEO.

11. At the conclusion of the formal hearing, the record was left open so that petitioner could provide proof that payment was made on the four outstanding assessments. Petitioner did not submit any additional documentation post hearing.

#### ***CONCLUSIONS OF LAW***

A. Pursuant to Tax Law § 1132(a), sales tax “shall be paid to the person required to collect it, as trustee for and on account of the state.”

B. Tax Law § 1133(a) imposes personal liability upon any person required to collect the tax imposed by Article 28 of the Tax Law for the tax imposed, collected or required to be collected. A person required to collect tax is defined to include, among others, corporate officers and employees who are under a duty to act for such corporation in complying with the requirements of Article 28 (Tax Law § 1131[1]).

C. The mere holding of corporate office does not, per se, impose tax liability upon an office holder (*see Vogel v. New York State Dept. Of Taxation & Fin.*, 98 Misc2d 222 [1979]; *Chevlowe v. Koerner*, 95 Misc 2d 388 [1978], *Matter of Unger*, Tax Appeals Tribunal, March 24, 1994, *confirmed* 214 AD2d 857 [1995], *lv denied* 86 NY2d 705 [1995]). Factors to be considered, as set forth in the Commissioner's regulations, include whether a person is authorized to sign the corporation's tax returns, was responsible for managing or maintaining the corporate books or was permitted to generally manage the corporation (20 NYCRR 526.11[b][2]).

The facts indicate that petitioner was a responsible person on behalf of A & J. Petitioner was an officer and was charged with the daily operations of the corporation. Petitioner does not dispute that he is a responsible officer, but rather, that he cannot be held personally liable for the sales and use taxes due since A & J is a corporation and, given this corporate structure, petitioner asserts that he cannot be held personally liable. This argument is without merit and is in direct contravention of the language contained in Tax Law § 1133(a).

D. The filed returns are evidence of the corporation's self-assessment of any tax reported and unpaid (*Matter of Megson v. New York State Tax Commn.*, 105 AD2d 481 [1984]). Although petitioner does not dispute the amounts as reported on the forms ST-100, he argues that these tax liabilities were paid. Petitioner was given additional time after the hearing to submit checks or other evidence to show payments made. However, petitioner failed to submit any further documentation.

E. Tax Law § 1145(a)(1)(i) authorizes the imposition of a penalty for the failure to timely file a sales tax return or to pay any tax imposed under articles 28 and 29 of the Tax Law. Penalties may be abated if petitioner can show reasonable cause and a lack of wilful neglect for

his failure to pay the sales tax. Petitioner did not make any argument for an abatement of the penalty imposed herein by the Division. Therefore, penalty is sustained.

F. The petition of Arthur Johnson is granted to the extent indicated in Finding of Fact 7, but is otherwise denied and the four remaining notices of determination are sustained in full.

DATED: Albany, New York  
October 27, 2016

/s/ Donna M. Gardiner  
ADMINISTRATIVE LAW JUDGE