

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
LENA KULIK :
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 December 1, 1981 :
through August 31, 1982.

DECISION

In the Matter of the Petition :
of :
SADIE KULIK :
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 December 1, 1981 :
through August 31, 1982.

Petitioners, Lena Kulik and Sadie Kulik, 49 Sycamore Street, Albany, New York filed petitions 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 December 1, 1981 through August 31, 1982 (File Nos. 43636 and 43637).

A formal hearing was held before Daniel J. Ranalli, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Office Campus, Albany, New York, on November 27, 1984 at 9:15 A.M. Petitioners appeared by Richard V. D'Alessandro, Esq. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq. of counsel).

ISSUE

Whether the State Tax Commission has jurisdiction to determine the sales tax liability of petitioners for the period December 1, 1981 through August 31, 1982.

FINDINGS OF FACT

1. During the period in issue, KSL Enterprises, Inc. ("KSL") timely filed three New York State and local sales and use tax returns reflecting taxes due but enclosed no remittance therewith. The returns showed taxes due in the following amounts:

<u>PERIOD ENDED</u>	<u>DATE FILED</u>	<u>TAX</u>
2/28/82	3/22/82	\$14,526.12
5/31/82	6/21/82	14,511.14
8/31/82	9/20/82	14,589.79

2. On January 18, 1983, the Audit Division issued a Notice and Demand For Payment of Sales and Use Taxes Due against petitioner Lena Kulik as an officer of KSL for the period ended February 28, 1982 through the period ended August 31, 1982, asserting taxes, penalty and interest due in the amount of \$34,641.37, scheduled as follows:

<u>PERIOD ENDED</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST DUE</u>
2/28/82	\$ 3,526.12	\$ 493.65	\$ 391.26
5/31/82	14,511.14	1,596.22	1,116.34
8/31/82	<u>10,635.81</u>	<u>1,914.45</u>	<u>456.38</u>
	\$ 28,673.07	\$ 4,004.32	\$ 1,963.98

On the same date, the Audit Division issued an identical notice and demand against petitioner Sadie Kulik as an officer of KSL.

3. Information contained on the KSL vendor registration card indicated that petitioner Lena Kulik was the president of KSL and that petitioner Sadie Kulik was the secretary. Petitioners offered no evidence that they were not personally liable as persons required to collect sales tax as officers of KSL.

Petitioners' sole argument raised at the hearing was that the State Tax Commission lacks jurisdiction or authority to conduct an administrative proceeding to determine petitioners' personal liability for unpaid sales taxes.

CONCLUSIONS OF LAW

A. That petitioners maintain that this Commission lacks jurisdiction to proceed administratively with respect to their personal liability for sales taxes asserted against and unpaid by KSL, relying upon the decision of the Court of Appeals in Matter of Parsons v. State Tax Commission, 34 N.Y.2d 190 (1974).

Parsons held that the State Tax Commission exceeded its statutory authority in serving officers and directors of a corporation, which had filed returns containing correct computations of tax liability, with Notices of Determination and Demands under Jeopardy for Payment of Sales and Use Taxes Due, and conducting hearings pursuant to such notices. Section 1138 of the Tax Law authorizes the Commission to determine the amount of tax due, notify the persons it deems liable and conduct hearings, upon request, only in two specified circumstances: (1) if a required return is not filed or if a return when filed is incorrect or insufficient; and (2) if the Commission believes that collection of the tax will be jeopardized by delay (provided the Commission determines and assesses the tax prior to the filing of the return and prior to the date the return is required to be filed).

B. That the document issued to each petitioner, was not an assessment issued pursuant to section 1138, but a Notice and Demand for Payment, a bill demanding that each petitioner pay the taxes due with respect to KSL for the period in issue.

C. That the decision in Parsons was rendered prior to the enactment of paragraph twenty-first of section 171 of the Tax Law (L. 1979, Ch. 714, eff. January 1, 1980) which provides in pertinent part:

"The state tax commission shall:

* * *

"Provide a hearing, as a matter of right, to any taxpayer upon such taxpayer's request, pursuant to such rules, regulations, forms and instructions as the tax commission may prescribe, unless a right to a hearing is specifically provided for, modified or denied by another provision of this chapter. Where the request for a hearing is made by a person seeking review of any taxes determined or claimed to be due under this chapter, the liability of such persons shall become finally and irrevocably fixed unless such person, within ninety days from the time such liability is assessed, shall petition the tax commission for a hearing to review such liability." (Emphasis added.)

No provision of Article 28 specifically provides for, modifies or denies petitioners' right to a hearing in this instance. The commission thus has jurisdiction under paragraph twenty-first of section 171 of the Tax Law to grant and conduct a hearing, as requested by petitioners in their petitions, and as mandated by the above-quoted provision of the Tax Law. Moreover, in light of Conclusion of Law "B", this Commission is not acting beyond the scope of its jurisdictional authority in conducting such hearing and rendering a decision concerning petitioners' personal liability based upon the facts adduced thereat.

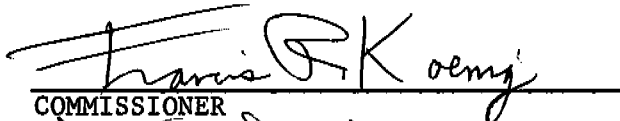
D. That the petitions of Lena Kulik and Sadie Kulik are denied and the notices and demands for payment of sales and use taxes due issued January 18, 1983 are sustained.

DATED: Albany, New York

MAR 14 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER