

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JANET KRISSEL,	:	DECISION
OFFICER OF LSK DESIGNS, 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 Period March 1, 1978	:	
through February 28, 1979.	:	

Petitioner, Janet Krissel, officer of LSK Designs, Inc., 110 East End Avenue, New York, New York 10028, 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 March 1, 1978 through February 28, 1979 (File No. 44128).

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 June 5, 1985 at 9:15 A.M. Petitioner appeared by Harry Shufrin, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Mark F. Volk, Esq., of counsel).

ISSUE

Whether the State Tax Commission has jurisdiction to proceed administratively against petitioner, Janet Krissel, with respect to her personal liability for unpaid sales taxes of LSK Designs, Inc., and, if so, whether petitioner was a person responsible for the payment of such taxes.

FINDINGS OF FACT

1. On May 20, 1981, the Audit Division issued to petitioner, Janet Krissel, officer of LSK Designs, Inc., a Notice and Demand for Payment of Sales and Use Taxes Due, assessing tax due for the period March 1, 1978 through

February 28, 1979 in the amount of \$14,751.74 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 an officer for the following in accordance with Sec. 1131(1) and 1133(b) (sic) of the Sales Tax Law.

<u>PER.</u>	<u>TAX DUE</u>	<u>PEN. DUE</u>	<u>INT. DUE</u>
5/31/78 - 478	\$4,645.60	\$1,161.40	\$1,625.96
8/31/78 - 179	3,482.83	870.70	1,114.50
11/30/78 - 279	4,560.83	1,140.20	1,322.64
2/28/79 - 379	2,062.48	515.62	598.11"

2. The above Notice and Demand issued to petitioner stems from sales and use tax returns filed by LSK Designs, Inc., which returns had no remittance of the tax shown due thereon.

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

4. 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 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 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 28 1986


PRESIDENT


COMMISSIONER


COMMISSIONER