

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LUCILLE SACHS	:	DECISION
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 September 1,	:	
1981 through August 31, 1982.	:	

Petitioner, Lucille Sachs, 1058 Fordham Lane, Woodmere, New York 11598, filed a petition for a revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 1981 through August 31, 1982 (File No. 54807).

A hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 6, 1986 at 9:15 A.M., with all briefs to be submitted by June 15, 1986. Petitioner appeared by Demov, Morris & Hammerling (Lanny M. Sagal and Jeffrey Golkin, Esqs., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether petitioner was an officer or employee of Stanlu Enterprises of Westbury, Inc. and, if so, whether she is personally liable for payment of sales taxes due from said corporation as a person under a duty to collect, truthfully account for and pay over said sales taxes.

FINDINGS OF FACT

1. On July 6, 1984, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to petitioner Lucille Sachs. Said notice, which encompassed the period September 1, 1981 through

August 31, 1982, determined additional sales tax due of \$65,474.67, plus penalty of \$19,084.64 and interest of \$20,224.54, for a total amount due of \$104,783.85. The notice also contained, inter alia, the following explanation:

"You are liable individually and as officer of Stanlu Enterprises of Westbury, Inc., under Sections 1131(1) and 1133 of the Tax Law for the following taxes determined to be due in accordance with Section 1138(a) of the Law."

2. In September 1977, Stanlu Enterprises of Westbury, Inc., (hereinafter "Stanlu") was formed by Stanley Sachs, petitioner's husband. Mr. Sachs was president and chief operating officer of Stanlu, a corporation which owned and operated a gasoline service station. Petitioner became secretary of Stanlu upon its inception solely as a matter of convenience to her husband. Mrs. Sachs made no financial investment in Stanlu, although she and her husband each owned one half of Stanlu's stock.

3. Although petitioner had authority to sign checks drawn on Stanlu's checking account, she never signed any checks nor did she ever sign any tax returns on behalf of said corporation. Mrs. Sachs was not involved in Stanlu's day-to-day operations, did not determine which creditors to pay, did not receive any compensation from Stanlu and never visited Stanlu's place of business. During the period at issue, petitioner was employed on a full time basis as president of a corporation named Stanlu Enterprises, Inc., whose business related to sculptured fingernails.

4. On July 31, 1978, petitioner resigned her position as secretary of Stanlu and also signed over to her husband her one share of Stanlu stock.

5. Included in petitioner's brief were proposed findings of fact one through eighteen, all of which are hereby adopted and incorporated by reference into this decision.

CONCLUSIONS OF LAW

A. That section 1131(1) of the Tax Law, as pertinent herein, defines "persons required to collect tax" as:

"any officer or employee of a corporation or of a dissolved corporation who as such officer or employee is under a duty to act for such corporation in complying with any requirement of this article".

B. That petitioner, during the period at issue, was not an officer or employee of Stanlu and therefore is not personally liable for payment of Stanlu's sales tax within the meaning and intent of Tax Law §§ 1131(1) and 1133(a).

C. That the petition of Lucille Sachs is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due dated July 6, 1984 is hereby cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 07 1986

Roderick W. Clem
PRESIDENT

Francis R. Koenig
COMMISSIONER

Walter J. Duda
COMMISSIONER