

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Lena Kulik :  
for Revision of a Determination or for Refund of :  
Sales & Use Taxes under Articles 28 & 29 of the :  
Tax Law for the Period 12/1/81-8/31/82. :

AFFIDAVIT OF MAILING

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In the Matter of the Petition :  
of :  
Sadie Kulik :  
for Revision of a Determination or for Refund of :  
Sales & Use Taxes under Articles 28 & 29 of the :  
Tax Law for the period 12/1/81-8/31/82. :

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State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 14th day of March, 1985, he served the within notice of Decision by certified mail upon Sadie Kulik, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sadie Kulik  
49 Sycamore Street  
Albany, NY 12208

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  
14th day of March, 1985.

David Parchuck

Gunnar W. Hagelund  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

March 14, 1985

Sadie Kulik  
Officer of K.S.L. Enterprises Inc.  
49 Sycamore Street  
Albany, NY 12208

Dear Ms. Kulik:

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  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Richard V. D'Alessandro  
111 Washington Avenue  
Albany, NY 12210  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Lena Kulik :  
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State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 14th day of March, 1985, he served the within notice of Decision by certified mail upon Lena Kulik, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lena Kulik  
49 Sycamore Street  
Albany, NY 12208

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  
14th day of March, 1985.

David Parchuck

Barbara A. Haggard  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Lena Kulik :  
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Sales & Use Taxes under Articles 28 & 29 of the :  
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In the Matter of the Petition :  
of :  
Sadie Kulik :  
for Revision of a Determination or for Refund of :  
Sales & Use Taxes under Articles 28 & 29 of the :  
Tax Law for the period 12/1/81-8/31/82. :

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State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 14th day of March, 1985, he served the within notice of Decision by certified mail upon Richard V. D'Alessandro, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard V. D'Alessandro  
111 Washington Avenue  
Albany, NY 12210

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
14th day of March, 1985.

David Parchuck

Annmarie P. Fitzgerald  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

March 14, 1985

Lena Kulik  
Officer of K.S.L. Enterprises Inc.  
49 Sycamore Street  
Albany, NY 12208

Dear Ms. Kulik:

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  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Richard V. D'Alessandro  
111 Washington Avenue  
Albany, NY 12210  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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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.

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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.

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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	10,635.81	1,914.45	456.38
	\$ 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

P 693 169 667

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Richard D. O'Leary</i>	
Street and No. <i>111 Washington Ave</i>	
P.O., State and ZIP Code <i>Albany NY 12210</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 693 169 666

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Indie Tulik</i>	
Street and No. <i>49 Supreme St</i>	
P.O., State and ZIP Code <i>Albany NY 12208</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

P 693 169 665

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>René Tulik</i>	
Street and No. <i>49 Supreme St</i>	
P.O., State and ZIP Code	
Postage	\$ <i>Albany NY 12208</i>
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982