

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

Janet Krissel  
Officer of LSK Designs, Inc.

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision  
of a Determination or Refund of Sales & Use Tax  
under Article 28 & 29 of the Tax Law for the Period  
3/1/78-2/28/79.

State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of January, 1986, he/she served the within notice of Decision by certified mail upon Janet Krissel, Officer of LSK Designs, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Janet Krissel  
Officer of LSK Designs, Inc.  
110 East End Ave.  
New York, NY 10028

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  
28th day of January, 1986.

David Parchuck

Connie A. Hagelund  
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	:	
Janet Krissel	:	
Officer of LSK Designs, Inc.	:	AFFIDAVIT OF MAILING
	:	
for Redetermination of a Deficiency or Revision	:	
of a Determination or Refund of Sales & Use Tax	:	
under Article 28 & 29 of the Tax Law for the	:	
Period 3/1/78-2/28/79.	:	

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State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 28th day of January, 1986, he served the within notice of Decision by certified mail upon Harry Shufrin, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harry Shufrin  
c/o Stuart, Becker & Co.  
665 Fifth Ave.  
New York, NY 10022

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  
28th day of January, 1986.

David Parchuck

Connie A. Hagelund  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

January 28, 1986

Janet Krissel  
Officer of LSK Designs, Inc.  
110 East End Ave.  
New York, NY 10028

Dear Ms. Krissel:

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  
Harry Shufirin  
c/o Stuart, Becker & Co.  
665 Fifth Ave.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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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.	:	

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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.

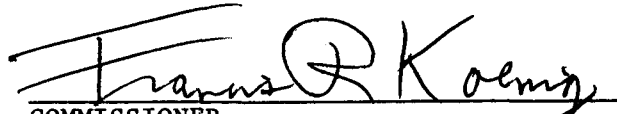
D. That there being no authority to determine petitioner's liability at an administrative hearing, the petition is dismissed.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 28 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

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**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

*Janet Krissel*

Sent to *0 Lsk Designs, Inc*

Street and No. *110 East End Ave.*

P.O., State and ZIP Code *New York, N.Y. 10028*

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

★ U.S.G.P.O. 1983-403-517

P 684 313 209

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

*Harry Shufman*

Sent to *910 Stuart, Becker + Co*

Street and No. *665 Fifth Ave.*

P.O., State and ZIP Code *New York, N.Y. 10022*

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

★ U.S.G.P.O. 1983-403-517