

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
PAOLANGELI CONTRACTORS, INC.	:	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, 1978	:	
through May 31, 1981.	:	

Petitioner, Paolangeli Contractors, Inc., 129 West Fall Street, Ithaca, New York 14850, 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 September 1, 1978 through May 31, 1981 (File No. 37940).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 164 Hawley Street, Binghamton, New York, on December 20, 1984 at 10:45 A.M., with all briefs to be submitted by March 1, 1985. Petitioner appeared by Edward A. Mazza, Esq. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUES

- I. Whether the rental of equipment to a corporation by a corporate officer is subject to sales and use taxes.
- II. Whether petitioner was legally dissolved prior to the issuance of a notice of additional taxes due; and, if so,
- III. Whether such notice was invalid.

FINDINGS OF FACT

1. Petitioner, Paolangeli Contractors, Inc., was a general contractor engaged primarily in masonry construction.

2. On December 20, 1981, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period September 1, 1978 through May 31, 1981 for taxes due of \$4,227.46, plus interest of \$674.28, for a total of \$4,901.74.

3. The audit of petitioner's books and records disclosed that petitioner had rented equipment from Francis J. Paolangeli, the corporation's president, and no sales tax had been collected on the rental charges by Mr. Paolangeli, nor was any use tax paid by petitioner. The tax determined due on the equipment rentals amounted to \$4,519.95. A credit of \$292.49 for an erroneous overpayment of tax was applied against the liability, leaving a balance due of \$4,227.46.

4. Francis J. Paolangeli paid sales tax on the equipment at the time of purchase. For income tax purposes, the equipment was depreciated on Mr. Paolangeli's personal income tax return and the rental payments received were reported as rental income on schedule C. Petitioner took a deduction on its corporation tax return for the rental expense.

The monthly rental charge to petitioner was in the same amount as Mr. Paolangeli's loan payment to the bank for the equipment. There was no written lease agreement between petitioner and Mr. Paolangeli.

5. The Minutes of the Directors' Meeting of petitioner held on September 1, 1981 indicated that it was resolved that petitioner was to be completely liquidated and dissolved.

A Certificate of Dissolution of petitioner was executed September 25, 1981. On the same date, petitioner filed Form 966, "Corporate Dissolution or Liquidation", as required under section 6043(a) of the Internal Revenue Code.

On January 21, 1982, the Department of Taxation and Finance notified the Department of State that it consented to the dissolution of petitioner.

6. On December 27, 1984, at the request of the Audit Division's counsel, the Department of State issued a certificate of good standing for petitioner. As of January 7, 1985, the records of the Department of Taxation and Finance list petitioner as an existing small business corporation.

7. Petitioner took the position that the notice of additional taxes due was invalid since it was issued after the corporation was dissolved. Additionally, petitioner argued that the assessment would result in double taxation because petitioner was a Subchapter S corporation and all of its income and liabilities were passed through to Mr. Paolangeli individually, who had already paid the sales tax on the equipment.

CONCLUSIONS OF LAW

A. That section 1101(b)(5) of the Tax Law defines the term "sale" as:

Any transfer of title or possession or both, exchange or barter, rental, lease..., in any manner or by any means whatsoever for a consideration..."

Petitioner and Francis J. Paolangeli were separate entities and the lease of property by one related entity to another related entity constituted a retail sale and was therefore subject to the tax imposed under section 1105(a) of the Tax Law to the extent of the consideration paid.

B. That the contradictory evidence presented with respect to the dissolution of petitioner does not establish whether or not the corporation had been legally dissolved. This fact, however, had no effect on the validity of the notice issued by the Audit Division. Section 1006(b) of the Business Corporation Law provides that the dissolution of a corporation does not effect any remedy

available against the corporation for any right or claim existing or any liability incurred before such dissolution.

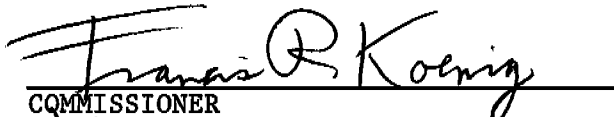
C. That the petition of Paolangeli Contractors, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 20, 1981 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 03 1985


PRESIDENT


COMMISSIONER


COMMISSIONER