

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SHEPPARD-POLLAK INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales & Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~Year(s)~~ Period ~~(s)~~ :  
January 1, 1968 through May 31, 1972.

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 24th day of March , 1977, ~~he~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon Sheppard-Pollak Inc.

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Sheppard-Pollak Inc.  
18 East 48th Street  
New York, New York 10017

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) 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

24th day of March , 1977.

Bruce Batchelor

J. M. M. M.

STATE OF NEW YORK  
STATE TAX COMMISSION

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January 1, 1968 through May 31, 1972.

State of New York  
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~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 24th day of March, 1977, ~~he~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon Gerard W. Cunningham, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Gerard W. Cunningham, Esq.  
Lee, Meagher, Cunningham & Lee  
26 Court Street  
Brooklyn, New York 11242

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) 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

24th day of March, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 24, 1977

TELEPHONE: (518) **457-1723**

Sheppard-Pollak Inc.  
18 East 48th Street  
New York, New York 10017

Gentlemen:

Please take notice of the **DETERMINATION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **1139 & 1243** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

**Frank J. Puccia**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
SHEPPARD-POLLAK INC.	:	DETERMINATION
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 January 1, 1968 through	:	
May 31, 1972.	:	

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Applicant, Sheppard-Pollak Inc., 18 East 48th Street, New York, New York 10017, filed an application 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 January 1, 1968 through May 31, 1972. A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 15, 1976. Applicant appeared by Gerard W. Cunningham, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq. of counsel).

ISSUE

Whether the application of Sheppard-Pollak Inc. for refund of state and local sales tax, filed on June 30, 1975 for tax paid prior to June 1, 1972, was timely filed.

FINDINGS OF FACT

1. On June 30, 1975, applicant, Sheppard-Pollak Inc., filed an application for credit or refund of state and local sales tax in the sum of \$3,300.11, representing sales tax paid, during the period January 1, 1968 through December 31, 1974, on the service of removing debris resulting from demolition in connection with the performance of a contract for the capital improvement to real property.

2. The Sales Tax Bureau granted a partial refund in the sum of \$255.75, plus interest which represented sales tax paid on and after June 1, 1972 and denied the remaining portion of the refund which represented sales tax paid prior to June 1, 1972, upon the grounds that the three-year period in which application for refund must be filed had expired in accordance with the meaning and intent of section 1139(a) of the Tax Law.

3. Applicant, Sheppard-Pollak Inc., has adopted two positions in support of its application:

a. That on September 15, 1971, the Industry Advancement Program and the Building Contractors Employers Association had a conference, at their request, with officials of the Department of Taxation and Finance to discuss the taxability of said debris removal service which was held to be taxable at that time by the Sales Tax Bureau. Applicant maintains that it refrained from filing an application for refund due to its wait for a ruling from the Department of Taxation and Finance on the aforesaid issue and

did not receive such a ruling until November 4, 1974, more than three years after said conference, thus the delay in filing the application for refund. It is applicant's position that the Department of Taxation and Finance should be barred from enforcing the three-year limitation on its application since it would be profiting as a result of its own delay.

b. Applicant also contends that since the removal of debris under said circumstances is not subject to sales tax, it cannot be construed that sales tax was payable, at any time, thereon. Therefore, applicant concludes, since section 1139(a) of the Tax Law states that application for refund must be filed "...within three years after the date when the tax was payable...", and since the tax was never payable, the three-year period allowed for filing of said application does not apply.

#### CONCLUSIONS OF LAW

A. That at no time during applicant's wait for a ruling by the Department of Taxation and Finance, was applicant denied or prevented from filing an application for refund, and, thus, it cannot be concluded that its failure to file such an application was caused by the Department of Taxation and Finance.

B. That at the time applicant paid the tax, such services were deemed to be taxable; and the persons to whom he paid the sales tax were required to report and remit said erroneously collected tax to

the Tax Commission on the return required to be filed for the period in which the tax was collected pursuant to section 1137 of the Tax Law.

C. That section 1139(a) of the Tax Law states that the application for refund shall be filed, "...in the case of tax paid by the applicant to a person required to collect tax, within three years after the date when the tax was payable by such person to the tax commission as provided in section eleven hundred thirty-seven...".

D. That the sales tax erroneously paid by applicant, Sheppard-Pollak Inc., prior to June 1, 1972 was payable to the Tax Commission more than three years before the application for refund was filed on June 30, 1975.

E. That the application of Sheppard-Pollak Inc. for revision of the determination denying refund of sales tax paid prior to June 1, 1972 is denied.

DATED: Albany, New York  
March 24, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER