

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL POLLACK, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales and Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~XXXXXX~~ Period ~~(X)~~ :  
June 1, 1968 through May 31, 1971.

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 20th day of May , 1977, ~~he~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon Paul Pollack, Inc.

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Paul Pollack, Inc.  
5 Moline Court  
Great Neck, New York 11024

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

20th day of May , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL POLLACK, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
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Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~Year(s)~~ or Period(s) :  
June 1, 1968 through May 31, 1971.

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 20th day of May , 1977, ~~he~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon Jerome Kahn  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Jerome Kahn, CPA  
501 Fifth Avenue  
New York, New York

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

20th day of May , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

May 20, 1977

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

Paul Pollack, Inc.  
5 Moline Court  
Great Neck, New York 11024

Gentlemen:

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

Please take further notice that pursuant to  
Section(s) **1138 and 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  
PAUL POLLACK, 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 June 1, 1968 through May 31, 1971.

:  
:  
: DETERMINATION  
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Applicant, Paul Pollack, Inc., 5 Moline Court, Great Neck, New York 11204, 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 June 1, 1968 through May 31, 1971. 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 August 23, 1976. Applicant, Paul Pollack, Inc., appeared by Jerome Kahn, C.P.A. The Sales Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

#### ISSUES

I. Whether exterior painting constitutes a capital improvement to real property within the meaning and intent of section 1105(c)(3) of the Tax Law.

II. Whether applicant's acceptance of Certificates of Capital Improvement from its customers relieves it from its responsibility to collect and pay over sales tax on taxable repairs to real property.

FINDINGS OF FACT

1. Applicant, Paul Pollack, Inc., filed New York State sales and use tax returns for the period June 1, 1968 through May 31, 1971.

2. On April 26, 1972, the Sales Tax Bureau issued a Notice of Determination and Demand against applicant, Paul Pollack, Inc., asserting additional sales and use tax due for the period June 1, 1968 through May 31, 1971 in the sum of \$4,148.77, plus penalty and interest of \$1,430.68. The aforesaid Notice of Determination was issued as a result of an examination of applicant's books and records for said periods.

3. Applicant disagreed with the assessment of additional sales and use tax due, since a major portion of the liability is computed on the basis of the disallowance of certain contracts claimed as capital improvements to real property by applicant and deemed taxable repairs to real property by the Sales Tax Bureau.

4. The contracts at issue consisted of the exterior painting of buildings and include, but were not limited to, windows, doors and other exterior elements. Said contracts also included scraping and wire brushing in preparation of painting and were estimated to have a useful life of ten years.

5. Applicant, Paul Pollack, Inc., accepted Certificates of Capital Improvement from its customers in connection with the

contracts at issue and did not collect sales tax on said contracts.

6. In support of its application, applicant, Paul Pollack, Inc., argued as follows:

(a). That the contracts at issue are for capital improvements to real property since the paint improves, adds to the value of and prolongs the life of the real property.

(b). That the Certificates of Capital Improvement, in use at the beginning of the period at issue, state "The determination of whether a contract is for a repair to real property or a capital improvement to real property is based upon the treatment for income tax purposes under the Federal Internal Revenue Code." Applicant, Paul Pollack, Inc., maintains it has no means of ascertaining how its customers reported the contracts at issue for purposes of said code. Therefore, it concludes that it accepted the Certificates of Capital Improvement in good faith and the Sales Tax Bureau is required to collect the tax directly from its customers.

#### CONCLUSIONS OF LAW

A. That the contracts for exterior painting performed by applicant, Paul Pollack, Inc., are in the nature of contracts for maintenance and repair and do not constitute capital improvements to real property within the meaning and intent of section 1105(c)(3) of the Tax Law.

B. That the Certificate of Capital Improvement is not an exemption Certificate within the meaning and intent of section 1132(c) of the Tax Law; therefore, applicant, Paul

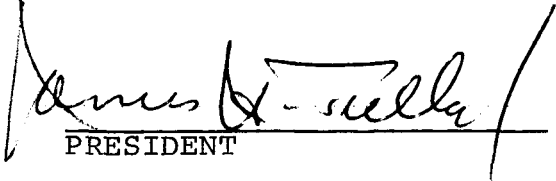
Pollack, Inc.'s acceptance of said certificates in good faith does not relieve it of its obligation to collect sales tax on sales, which are deemed to be exempt by its customers, but, are in fact taxable transactions.

C. That, in accordance with the meaning and intent of section 1133(a) of the Tax Law, applicant, Paul Pollack, Inc., is liable for the payment of sales tax imposed, collected or required to be collected, pursuant to Article 28 of the Tax Law.

D. That the application of Paul Pollack, Inc. is denied and the Notice of Determination and Demand issued on April 26, 1972 is sustained.

DATED: Albany, New York  
May 20, 1977

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER