

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LANGE AND LANGE, 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 ~~Year(s)~~ or Period(s) :  
September 1, 1969 through August 31, 1972.

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 27th day of April , 1977, ~~she~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon Lange and Lange, Inc.

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Lange and Lange, Inc.  
39-07 Bell Boulevard  
Bayside, New York 11361

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)~~  
~~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

27th day of April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

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of

LANGE AND LANGE, INC.

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For a Redetermination of a Deficiency or :  
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Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~XXXXXX~~ Period(s) :  
September 1, 1969 through August 31, 1972.

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 27th day of April , 1977, ~~she~~ served the within  
Notice of Determination by (~~certified~~) mail upon John A. Burns, CPA

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: John A. Burns, CPA  
3000 Marcus  
Lake Success, New York 11040

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

27th day of April , 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

April 27, 1977

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

**Lange and Lange, Inc.**  
**39-07 Bell Boulevard**  
**Bayside, New York 11361**

**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*  
**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	:	
LANGE AND LANGE, 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 Periods September 1, 1969 through	:	
August 31, 1972.	:	

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Applicant, Lange and Lange, Inc., 39-07 Bell Boulevard, Bayside, New York 11361, 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 periods September 1, 1969 through August 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 July 16, 1976. Applicant appeared by John A. Burns, C.P.A. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq. of counsel).

ISSUES

I. Whether a contract for the restoration of real property, damaged by fire, to its former state is a repair or capital improvement.

II. Whether an automobile garaged in a private dwelling is subject to the New York City parking tax.

FINDINGS OF FACT

1. Applicant, Lange and Lange, Inc., filed New York State sales and use tax returns for the period September 1, 1969 through August 31, 1972.

2. On May 14, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand against applicant, Lange and Lange, Inc., for sales and use tax due in the amount of \$1,039.40, plus penalty and interest of \$336.17 for the periods September 1, 1969 through August 31, 1972. This Notice of Determination and Demand was issued as a result of an examination of applicant's books and records for said periods.

3. The aforementioned Notice of Determination and Demand was based upon:

A. A contract in the test period, June 1, 1971 through November 11, 1971, treated as a repair by the applicant and

deemed a capital improvement by the Sales Tax Bureau. The applicant had paid sales tax to its vendors on materials used in said contract and accordingly took credit for the sales tax, on its quarterly sales tax return, when the repair was charged to its customer at retail. The Sales Tax Bureau disallowed the credit and projected the alleged error over the entire audit period.

B. Failure of the applicant to pay the New York City parking tax on its automobile parking expense for the period September 1, 1970 through August 31, 1972.

C. Failure of the applicant to pay sales tax on rubbish removal.

4. The contract in dispute involves the restoration of real property damaged by fire. The contract included replacing, repainting, refinishing and cleaning walls and floors damaged by fire and/or smoke and rewiring and replacing electrical lines and outlets.

5. The automobile parking expense incurred by applicant, Lange and Lange, Inc. represents cost of parking an automobile at a private dwelling within New York City.

#### CONCLUSIONS OF LAW

A. That the contract for the restoration of real property is deemed a repair to real property and accordingly, the materials

used in said contract were purchased for resale and are not subject to the New York State sales tax within the meaning and intent of section 1105(a) of the Tax Law.


B. That the deficiency based upon the New York City parking tax is cancelled since the activity occurred in a private dwelling and is therefore excluded from said tax in accordance with the meaning and intent of section A 46-20 of the New York City Administrative Code.

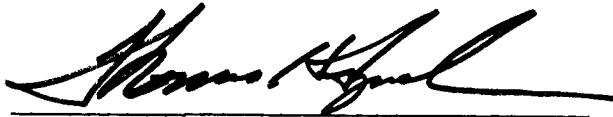
C. That the Sales Tax Bureau shall revise the total deficiency in accordance with the aforesaid conclusions.

DATED: Albany, New York  
April 27, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER