

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
William Pahlmann Associates :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 6/1/71 - 5/31/74. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, 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 14th day of December, 1979, he served the within notice of Determination by mail upon William Pahlmann Associates, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William Pahlmann Associates
244 E. 84th St.
New York, NY 10028

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
14th day of December, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
William Pahlmann Associates :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Period 6/1/71 - 5/31/74. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, 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 14th day of December, 1979, he served the within notice of Determination by mail upon the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sirs
Sanford Becker & Co.
1 E. 42nd St.
New York, NY 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
14th day of December, 1979.

Joanne Krapp

J. Vredenburg

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

December 14, 1979

William Pahlmann Associates
244 E. 84th St.
New York, NY 10028

Gentlemen:

Please take notice of the Determination of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Sanford Becker & Co.
1 E. 42nd St.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
WILLIAM PAHLMANN ASSOCIATES, 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 June 1, 1971 through May 31,	:	
1974.	:	

Applicant, William Pahlmann Associates, Inc., 244 E. 84th Street, New York, New York 10028, 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, 1971 through May 31, 1974 (File No. 20376).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 6, 1979 at 1:15 P.M. Applicant appeared by Sanford E. Becker, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether the test period audit of expense purchases properly reflected applicant's tax liability on the purchases of expense items.

II. Whether various purchases by applicant which were delivered to the residence of the corporate president should be taxed at their cost or at a marked up selling price.

III. Whether the penalties and interest in excess of the minimum statutory rate should be cancelled.

FINDINGS OF FACT

1. Applicant, William Pahlmann Associates, Inc. operates as an interior

decorator and designer.

2. On January 13, 1975, as the result of a field audit, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued against applicant, William Pahlmann Associates, Inc. imposing additional sales and use tax due of \$3,071.69 plus penalty and interest of \$860.08 for a total due of \$3,931.77 for the period June 1, 1971 through May 31, 1974.

3. The Sales Tax Bureau received a Consent Extending Period of Limitation for Assessment of Sales and Use Taxes for the period June 1, 1971 through May 31, 1974. The consent extended the period to September 19, 1975.

4. On audit, the Sales Tax Bureau's auditor examined expense purchases for 1973. The auditor discovered that \$5,866.62 in expense purchases were made on which no tax was charged. This discrepancy was projected over the entire audit period, resulting in tax due of \$1,144.19. Purchases of various inventory items totaling \$19,861.83 were delivered to the corporate president's residence. The auditor deemed these items to be sales and applied a 37.4 percent markup. This resulted in additional sales tax due of \$1,910.31. The auditor also found tax due of \$17.19 on the purchase of fixed assets. Applicant does not contest this portion of the audit.

5. Applicant contended that purchases from Frank Dost which were included in the expense purchase test were actually purchases of the corporate president and should be excluded. Applicant offered no documentary or other substantial evidence to support this contention.

6. Applicant made various purchases which were delivered to the corporate president's residence. These items were used to decorate his apartment and said items remained in applicant's work-in-process inventory account.

7. Applicant at all times acted in good faith.

CONCLUSIONS OF LAW

A. That the Sales Tax Bureau properly determined applicant's tax liability on expense purchases within the meaning and intent of section 1138(a) of the Tax Law.

B. That the various purchases by applicant which were delivered to the corporate president's residence were used in a taxable manner by applicant and are subject to a compensating use tax within the meaning and intent of section 1110 of the Tax Law. Such items are to be taxed at cost.

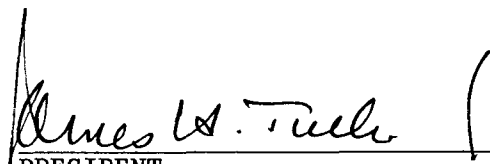
C. That the penalties and interest in excess of the minimum statutory rate are cancelled.

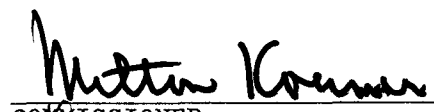
D. That the application of William Pahlmann Associates, Inc. is granted to the extent of reducing the tax due for the period June 1, 1971 through May 31, 1974 from \$3,071.69 to \$2,551.70 in accordance with Conclusion of Law "B"; that such tax is due with interest at the minimum statutory rate; that the Audit Division is hereby directed to modify accordingly the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued January 13, 1975; and that except as so granted, the application is in all other respects denied.

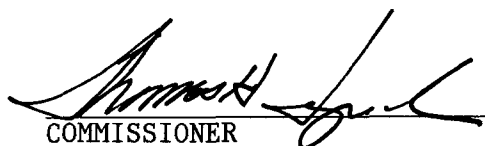
DATED: Albany, New York

DEC 14 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER