

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Len Patlen Store Design & Construction : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales & Use Tax :  
under Article 28 & 29 of the Tax Law for the :  
Period 12/1/77-2/29/80.

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State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 23rd day of May, 1985, he served the within notice of decision by certified mail upon Len Patlen Store Design & Construction, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Len Patlen Store Design & Construction  
45 Manning Blvd.  
Albany, NY 12203

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
23rd day of May, 1985.

David Parchuck

James A. Hagelund  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

May 23, 1985

Len Patlen Store Design & Construction  
45 Manning Blvd.  
Albany, NY 12203

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Mark L. Koblenz  
Koblenz & Carr  
74 State St.  
Albany, NY 12207  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of  
Len Patlen Store Design & Construction :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Sales & Use Tax  
under Article 28 & 29 of the Tax Law for the :  
Period 12/1/77-2/29/80.

---

State of New York :  
ss.:  
County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 23rd day of May, 1985, he served the within notice of decision by certified mail upon Mark L. Koblenz, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mark L. Koblenz  
Koblenz & Carr  
74 State St.  
Albany, NY 12207

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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  
23rd day of May, 1985.

David Parchuck

Constance A. Hagelund  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
LEN PATLEN STORE DESIGN AND CONSTRUCTION	:	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 December 1, 1977	:	
through February 29, 1980.	:	

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Petitioner, Len Patlen Store Design and Construction, 45 Manning Boulevard, Albany, New York 12203, 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 December 1, 1977 through February 29, 1980 (File No. 36232).

A small claims hearing was held before Richard L. Wickham, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York, on June 27, 1984 at 9:00 A.M., with all briefs to be submitted by October 1, 1984. Petitioner appeared by Mark L. Koblenz, Esq. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

ISSUES

- I. Whether petitioner was required to collect sales tax on items of movable fixtures sold in conjunction with capital improvements to real property.
- II. Whether the Audit Division is estopped from assessing sales tax due against petitioner.

FINDINGS OF FACT

1. Petitioner, Len Patlen Store Design and Construction, is in the business of designing retail store and business interiors, including the implementation and construction of the design scheme. Typically, petitioner

creates and engineers a design concept unique to its client. Thereafter, petitioner supervises the implementation of the design concept, procuring supplies and materials, performing construction work, and employing subcontractors. Periodically, petitioner purchases movable fixtures in connection with design concepts. Some of the fixtures were fastened to the framework on the walls prior to the installation of the wallboard and were not movable. The removal of these fixtures would cause material damage to the walls. The petitioner has offered no proof as to which items of tangible personal property were installed in the specific manner described by the petitioner or the dollar value related to those specific items.

2. On August 31, 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 assessing a tax due of \$6,605.75 plus interest for the period December 1, 1978 through February 29, 1980. The Audit Division subsequently reissued this notice on September 18, 1981 and petitioner timely filed a protest requesting a hearing.

3. On audit, the auditor reviewed worksheets which petitioner prepared for the purpose of determining the cost of each contract entered into during the audit period. Resort to this method of audit was due to the failure on the part of petitioner to maintain a formal set of books. Based on review of the worksheets and an on-site examination of some projects of petitioner, the auditor determined that the movable fixtures procured by petitioner and furnished as a part of its design concepts were not part of a capital improvement to the real property. The auditor computed a tax on the movable fixtures consisting of such items as shelving, desks, showcases, mannequins, display stools, raised platforms, display stands and cash counters, in the amount of \$6,605.75.

4. Petitioner's principal officer, Philip L. Patlen, testified that when it became apparent that he was going to commence activities in the fields of design and construction, a meeting was arranged with representatives of the Tax Department. At that time petitioner was allegedly informed that no tax was to be collected from clients as the overall work performed for them resulted in a capital improvement, but that petitioner was to pay sales tax on the materials purchased for use in the conduct of its business. At the hearing, petitioner introduced into evidence several invoices showing tax charged by its suppliers. The purpose of introducing said invoices was to establish a record of petitioner's compliance in respect to instructions furnished it. Review of the invoices indicates they represent purchases of materials used primarily in construction, not movable fixtures of the type in question.

5. Petitioner contends that the fixtures were purchased in its capacity as an agent for the client. However, petitioner has offered no proof as to the existence of a principal-agent relationship. The invoices introduced into evidence by the petitioner did not clearly disclose to the supplier the name of the client for whom the petitioner was allegedly acting as an agent. In the instances where the petitioner arranged for the purchase of the fixtures, only the name of the petitioner appeared on the invoice of the supplier as the purchaser of the fixtures.

6. Petitioner made no profit on the transactions since it was reimbursed for just the cost of the fixtures. In addition, petitioner completed some contracts where the movable fixtures were furnished by the client who had acquired them himself from the manufacturer or supply house.

CONCLUSIONS OF LAW

A. That section 1132(c) of the Tax Law provides that:

"(f)or the purpose of the proper administration of this article and to prevent evasion of the tax hereby imposed, it shall be presumed that all receipts for property or services of any type mentioned in subdivisions (a), (b), (c) and (d) of section eleven hundred five...are subject to tax until the contrary is established, and the burden of proving that any receipt...is not taxable hereunder shall be upon the person required to collect tax or the customer."

B. That petitioner has failed to show that the receipts received for movable fixtures were not receipts from the retail sale of tangible personal property which are subject to sales tax under subdivision (a) of section eleven hundred five.

C. That the doctrine of estoppel sought to be enforced by the petitioner is not applicable. Exceptional facts did not exist as would require its application in order to avoid manifest injustices. Matter of Sheppard-Pollack, Inc. v. Tully, 64 A.D.2d 296, 298 (1978). Public policy favors full and uninhibited enforcement of the Tax Law, and the general rule that estoppel cannot be employed against the State or governmental subdivision is particularly applicable with respect to the Tax Commission. Matter of Turner Constr. Co. v. State Tax Comm., 57 A.D.2d 201, 203 (1977).

D. That the petition of Len Patlen Store Design and Construction is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 18, 1981 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 23 1985

*Richard W. Chen*  
PRESIDENT

*Francis R. Koenig*  
COMMISSIONER

*Mark J. Jurek*  
COMMISSIONER



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**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to <i>Don Palmer State Design Cent</i>	
Street and No. <i>45 Murray Blvd</i>	
P.O., State and ZIP Code <i>Cubany NY 12203</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

P 693 169 871

**RECEIPT FOR CERTIFIED MAIL**

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1983-403-517

PS Form 3800, Feb. 1982

Sent to <i>Mark R. Felling</i>	
Street and No. <i>Felling &amp; Carr</i>	
P.O., State and ZIP Code <i>74 Still St</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return receipt showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	