

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
Paolangeli Contractor, Inc.

:

:

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 9/1/78-5/31/81.

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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 3rd day of October, 1985, he served the within notice of Decision by certified mail upon Paolangeli Contractor, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paolangeli Contractor, Inc.  
129 W. Fall St.  
Ithaca, NY 14850

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  
3rd day of October, 1985.

David Parchuck

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

STATE OF NEW YORK

STATE TAX COMMISSION

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of

Paolangeli Contractor, Inc. :

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under Article 28 & 29 of the Tax Law for the :  
Period 9/1/78-5/31/81.

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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 3rd day of October, 1985, he served the within notice of Decision by certified mail upon Edward A. Mazza, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward A. Mazza  
Mazza, Williamson & Clune  
317 North Tioga Street  
Ithaca, NY 148510126

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  
3rd day of October, 1985.

David Parchuck

James P. [Signature]  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

October 3, 1985

Paolangeli Contractor, Inc.  
129 W. Fall St.  
Ithaca, NY 14850

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  
Edward A. Mazza  
Mazza, Williamson & Clune  
317 North Tioga Street  
Ithaca, NY 148510126  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
PAOLANGELI CONTRACTORS, INC.	:	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 September 1, 1978	:	
through May 31, 1981.	:	

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Petitioner, Paolangeli Contractors, Inc., 129 West Fall Street, Ithaca, New York 14850, 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 September 1, 1978 through May 31, 1981 (File No. 37940).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 164 Hawley Street, Binghamton, New York, on December 20, 1984 at 10:45 A.M., with all briefs to be submitted by March 1, 1985. Petitioner appeared by Edward A. Mazza, Esq. The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, Esq., of counsel).

#### ISSUES

- I. Whether the rental of equipment to a corporation by a corporate officer is subject to sales and use taxes.
- II. Whether petitioner was legally dissolved prior to the issuance of a notice of additional taxes due; and, if so,
- III. Whether such notice was invalid.

#### FINDINGS OF FACT

1. Petitioner, Paolangeli Contractors, Inc., was a general contractor engaged primarily in masonry construction.

2. On December 20, 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 covering the period September 1, 1978 through May 31, 1981 for taxes due of \$4,227.46, plus interest of \$674.28, for a total of \$4,901.74.

3. The audit of petitioner's books and records disclosed that petitioner had rented equipment from Francis J. Paolangeli, the corporation's president, and no sales tax had been collected on the rental charges by Mr. Paolangeli, nor was any use tax paid by petitioner. The tax determined due on the equipment rentals amounted to \$4,519.95. A credit of \$292.49 for an erroneous overpayment of tax was applied against the liability, leaving a balance due of \$4,227.46.

4. Francis J. Paolangeli paid sales tax on the equipment at the time of purchase. For income tax purposes, the equipment was depreciated on Mr. Paolangeli's personal income tax return and the rental payments received were reported as rental income on schedule C. Petitioner took a deduction on its corporation tax return for the rental expense.

The monthly rental charge to petitioner was in the same amount as Mr. Paolangeli's loan payment to the bank for the equipment. There was no written lease agreement between petitioner and Mr. Paolangeli.

5. The Minutes of the Directors' Meeting of petitioner held on September 1, 1981 indicated that it was resolved that petitioner was to be completely liquidated and dissolved.

A Certificate of Dissolution of petitioner was executed September 25, 1981. On the same date, petitioner filed Form 966, "Corporate Dissolution or Liquidation", as required under section 6043(a) of the Internal Revenue Code.

On January 21, 1982, the Department of Taxation and Finance notified the Department of State that it consented to the dissolution of petitioner.

6. On December 27, 1984, at the request of the Audit Division's counsel, the Department of State issued a certificate of good standing for petitioner. As of January 7, 1985, the records of the Department of Taxation and Finance list petitioner as an existing small business corporation.

7. Petitioner took the position that the notice of additional taxes due was invalid since it was issued after the corporation was dissolved. Additionally, petitioner argued that the assessment would result in double taxation because petitioner was a Subchapter S corporation and all of its income and liabilities were passed through to Mr. Paolangeli individually, who had already paid the sales tax on the equipment.

#### CONCLUSIONS OF LAW

A. That section 1101(b)(5) of the Tax Law defines the term "sale" as:

Any transfer of title or possession or both, exchange or barter, rental, lease..., in any manner or by any means whatsoever for a consideration..."

Petitioner and Francis J. Paolangeli were separate entities and the lease of property by one related entity to another related entity constituted a retail sale and was therefore subject to the tax imposed under section 1105(a) of the Tax Law to the extent of the consideration paid.

B. That the contradictory evidence presented with respect to the dissolution of petitioner does not establish whether or not the corporation had been legally dissolved. This fact, however, had no effect on the validity of the notice issued by the Audit Division. Section 1006(b) of the Business Corporation Law provides that the dissolution of a corporation does not effect any remedy


available against the corporation for any right or claim existing or any liability incurred before such dissolution.

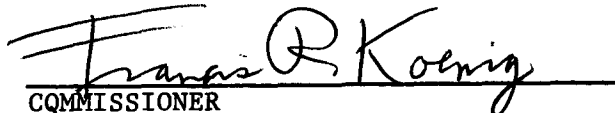
C. That the petition of Paolangeli Contractors, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 20, 1981 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 03 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 153 387 573

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1984-446-014  PS Form 3800, Feb. 1982	Sent to	<i>Edward A. Mezza</i>	
	Street and No.	<i>Mezza, Anthony P. Mezza</i>	
	P.O., State and ZIP Code	<i>317 N. 107th St</i>	
	Postage	<i>Mezza NY 14850 \$0.626</i>	
	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 153 387 572

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1984-446-014  PS Form 3800, Feb. 1982	Sent to	<i>Parlangeli Contracting Co.</i>	
	Street and No.	<i>124 W. 4th St</i>	
	P.O., State and ZIP Code	<i>Meza NY 14850</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			