

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID CYVIAK

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,
1982 through December 31, 1983.

Petitioner, David Cyviak, 3a Mishmar Hayarden Street, Tel Aviv, Israel 69865, 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, 1982 through December 31, 1983 (File No. 54383).

A hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 6, 1987 at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq., of counsel).

ISSUE

Whether petitioner is properly entitled to a refund of sales tax paid on certain tangible personal property purchased.

FINDINGS OF FACT

1. David Cyviak (hereinafter "petitioner") filed two applications for credit or refund of state and local sales or use tax. One application, which was assigned claim number 3708, was filed in October 1983 in the amount of \$450.67 for the period December 1982 through September 1983. The other application, which was assigned claim number 5086, was filed in December 1983 in the amount of \$63.76 for the period October 1983 through December 1983.

2. The explanation upon which claim number 3708 was filed *is* contained thereon as follows:

"For the last 3 years I was a temporary resident of N.Y.C. I am an Israeli citizen. Since 12/82 I am preparing myself with my family (wife and 2 daughters) toward moving back to Israel on 12/83. During that period, everything which I purchased from Macys, Bloomingdales, Fortunoff was for usage in Israel. I also used my Visa card which was issued in Israel to make purchases of things to take to Israel. All what I already purchased *is* in the warehouse."

3. The explanation for claim number 5086 *is* essentially the same as that contained on claim number 3708.

4. On March 12, 1984, the Audit Division issued a notice advising petitioner that his refund claim number 5086 was denied in full. Said notice contained the following reasons for such denial:

"According to the New York State Tax Law, the sales tax *is* a 'destination' tax. That *is*, the point at which possession of the tangible personal property *is* transferred by the vendor to the purchaser determines the tax charged. Since the merchandise you purchased was taken possession of in New York State, it *is* taxable.

In order for the purchase to be exempt, the merchandise must be shipped out of the State by the seller, not taken out of the State by the purchaser."

5. On August 10, 1984, the Audit Division issued a notice advising petitioner that his refund claim number 3708 was denied in full. Said notice contained essentially the same reason for such denial as that contained in the notice issued with respect to claim number 5086.

6. Petitioner's furniture purchases were sent by the vendor directly to a warehouse in Brooklyn, New York where petitioner maintained storage space. Smaller items which petitioner purchased were packed and sporadically brought to the warehouse for storage. Ultimately, the goods purchased by petitioner were shipped in a container to Israel.

7. Petitioner argued that although the tangible personal property upon which the sales tax refunds are claimed was purchased in New York, it was used exclusively in Israel and therefore not subject to tax.

CONCLUSIONS OF LAW

A. That 20 NYCRR 525.2(a)(3) provides that:

"The sales tax is a 'destination tax', that **is**, the point of delivery or point at which possession **is** transferred by the vendor to the purchaser or designee controls both the tax incident and the tax rate."


B. That since the tangible personal property was purchased in New York and possession was transferred to the purchaser or designee in New York, the property is properly subject to New York State sales tax.

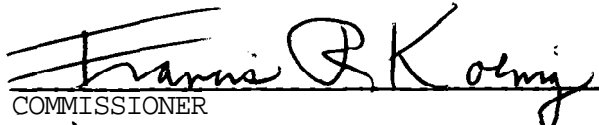
C. That the petition of David Cyviak is denied and the notices of refund denial dated March 12, 1984 and August 10, 1984 are sustained.

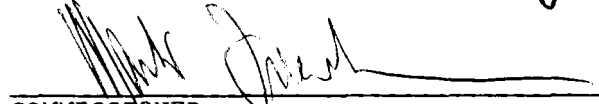
DATED: Albany, New York

STATE TAX COMMISSION

AUG 21 1987


PRESIDENT


COMMISSIONER


COMMISSIONER