

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ZIREL REALTY CORP.

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~(Year(s))~~ period  
June 1, 1967 - March 21, 1969

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Lynn Wilson , 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 30th day of March , 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon ZIREL REALTY  
CORP. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Zirel Realty Corp.  
4250 Hempstead Turnpike  
Bethpage, New York 11714

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

30th day of March , 1972.

Martha Funnar

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ZIREL REALTY CORP.

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~(year(s))~~ period  
June 1, 1967 - March 21, 1969

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Lynn Wilson, 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 30th day of March, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon ASSEMBLYMAN ARTHUR J. KREMER (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Assemblyman Arthur J. Kremer  
20 West Park Avenue  
Long Beach, New York 11561  
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

30th day of March, 1972.

Martha Funnaro

Lynn Wilson



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE  
BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12226

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**March 30, 1972**

**Sirel Realty Corp.**  
**4250 Hempstead Turnpike**  
**Bethpage, New York 11714**

**Gentlemen:**

Please take notice of the **DETERMINATION** of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **sections 1138 & 1243** of  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 months** after  
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed  
in accordance with this decision or concerning any other matter relat-  
ing hereto may be addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

  
**Lawrence A. Newman**  
HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
ZIREL REALTY CORP.	:	DETERMINATION
for a Credit or Refund of Sales and Use	:	
Taxes under Articles 28 and 29 of the	:	
Tax Law for the period from March 1, 1969	:	
through August 7, 1970.	:	

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Zirel Realty Corp. filed an application for credit or refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period from March 1, 1969 through August 7, 1970.

A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York on October 19, 1971.

The Sales Tax Bureau was represented by Edward H. Best, Esq. (Solomon Sies, Esq., of Counsel) and the applicant by Arthur J. Kremer, Esq.

ISSUE

Whether the applicant corporation qualified for a refund under Tax Law section 1119A, Subdivision 3, based upon property used in performance of preexisting contracts.

FINDINGS OF FACT

1. On October 29, 1970, Zirel Realty Corp., filed an application for credit or refund of sales and use taxes for the period from March 1, 1969 through August 7, 1970, in the amount of \$6,801.52.

2. On March 10, 1971, the application was denied in full by the Sales Tax Bureau.

3. On March 15, 1971, a request was made for a formal hearing on behalf of the applicant.

4. The arithmetical computations supporting the applicant's claim for refund are not in dispute.

5. Samuel Walton and Jean Walton were president and secretary, respectively, and directors of Zirel Realty Corp., of 854 Executive Towers, Inc., and of 860 Executive Towers, Inc.

6. On February 2, 1967, at nine o'clock in the forenoon, Samuel Walton and Jean Walton were present at a special meeting of the Board of Directors of 860 Executive Towers, Inc. In the course of the meeting, a resolution was passed appointing the Zirel Realty Corp. to act as general contractors for the purpose of constructing an apartment house and garage on property owned by 854 Executive Towers, Inc. and in accordance with submitted plans at a cost of \$18,000.00 per apartment unit.

7. On February 2, 1967, at ten o'clock in the forenoon, Samuel Walton and Jean Walton were present at a special meeting of the Board of Directors of Zirel Realty Corp. In the course of the meeting, a resolution was passed accepting an appointment as general contractors of 860 Executive Towers, Inc. for the purposes of constructing an apartment house and garage and in accordance with submitted plans at a cost of \$18,000.00 per apartment unit.

8. On February 5, 1968, identical resolutions were executed at special meetings of the Boards of Directors of 854 Executive Towers, Inc. and of Zirel Realty Corp., as in paragraphs 6 and 7 above.

9. Because the officers were identical in Zirel Realty Corp., 854 Executive Towers, Inc. and 860 Executive Towers, Inc., the corporations did not enter into any written contracts.

10. During the period from June 1, 1967 through March 31, 1969, Zirel Realty Corp. entered into written contracts with suppliers for the purpose of obtaining materials to be incorporated into the building structures, at fixed prices.

11. The unit cost of \$18,000 contained in the corporate resolutions was an estimate, which in turn, was based on various estimates of the cost components of an apartment house. The actual cost of construction was less than \$18,000 per apartment unit.

12. Due to an increase in the combined New York State and local sales and use tax rate after the contracts were entered into, Zirel Realty Corp. paid additional amounts of sales taxes when the materials were delivered, which were not contemplated when the contracts were entered into.

13. Section 1119 of the Tax Law provides that the sales and use tax shall not be imposed,

"(A) (3) on the sale to or use by a contractor or subcontractor of tangible personal property which is used by him solely in the performance of a preexisting lump sum or unit price construction contract. For the purpose of clause (3) of the preceding sentence, the term 'preexisting lump sum or unit price construction contract' shall mean a contract for the construction of improvements to real property under which the amount payable to the contractor or subcontractor is fixed without regard to the costs incurred by him in the performance thereof."

#### DETERMINATION

A. The applicant, Zirel Realty Corp., did not enter into a preexisting lump sum or unit price construction contract under which the amount payable to the contractor is fixed without regard to the costs incurred by him in the performance thereof.

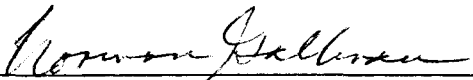
B. The applicant does not qualify for a refund under Tax Law section 1119A, subdivision 3, based upon property used in performance of a preexisting contract within the meaning and intent

of the said section and subdivision.

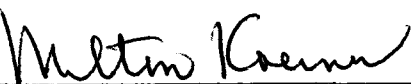
C. The application for credit or refund is denied.

DATED: Albany, New York  
*March 30, 1972.*

STATE TAX COMMISSION

  
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COMMISSIONER

  
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COMMISSIONER

  
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