

STATE OF NEW YORK  
STATE TAX COMMISSION

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: IN THE MATTER OF APPLICATION OF :  
: IRVING TRUST COMPANY :  
:

For Refund of Sales and Use Taxes imposed  
pursuant to Article 28 and under the  
authority of Article 29 of the Tax Law,  
and imposed pursuant to New York City Local  
Law No. 73 of 1965, as amended, for the  
period commencing August 1, 1965 and ending  
December 31, 1965, for the calendar years  
1966, 1967 and 1968 and for the period  
commencing January 1, 1969 and ending  
December 23, 1969.  
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FORMAL  
DETERMINATION

The taxpayer, Irving Trust Company, having duly and timely filed applications for refund of sales and compensating use taxes for the periods August 1, 1965 through December 31, 1965, January 1, 1966 through December 31, 1966, January 1, 1967 through December 31, 1967, January 1, 1968 through December 31, 1968, and January 1, 1969 through December 23, 1969 imposed pursuant to Article 28 and under the authority of Article 29 of the Tax Law, and imposed pursuant to New York City Local Law No. 73 of 1965, as amended; and said applications for refund having been denied by the State Tax Commission; and the taxpayer then having duly and timely filed applications for a hearing by the State Tax Commission to review the denials of the requested refunds; and a stipulation of facts having been entered into by and between the taxpayer, Irving Trust Company, and the State Tax Commission, a copy of such stipulation of facts together with the exhibits which are part thereof, being hereto attached and made a part of this determination, the State Tax Commission hereby finds the following facts:

1. The taxpayer, Irving Trust Company, is a commercial bank and trust company incorporated under the laws of the State of New York. It is now and was at all relevant times engaged in the commercial banking business in this State.

2. The taxpayer, during the periods involved, exercised substantially similar functions and engaged in substantially similar business as national banks in the State of New York incorporated under the laws of the United States.

3. The taxpayer, during the periods involved, was a purchaser of tangible personal property and services, including the following:

electronic computer equipment and services, office equipment, office furniture and furnishings, office supplies, check books and other bank forms, vaults, safe deposit boxes, automobiles and trucks, repairs, utilities, cleaning, maintenance supplies, medical supplies, publications, storage, printing and mailing, dining room and food service, and give-away premiums.

All of the property, and all other items purchased during the aforesaid periods by the taxpayer on which sales or compensating use taxes have been paid, are of a description, nature and kind subject to the sales and compensating use taxes imposed by Article 28 and pursuant to the authority of Article 29 of the Tax Law in the case of persons subject to tax thereunder.

4. All of the aforesaid tangible personal property services and items are similar in description, nature and kind to those purchased or used in this State by purchasers generally, and upon which taxes have been paid by such purchasers whether or not such purchasers were doing a banking business or residing in, doing business in or incorporated in the State of New York or under the laws thereof. The taxpayer concedes that taxes were

lawfully due and owing from purchasers generally. The taxpayer contends however that those purchasers which were doing a banking business under the facts set forth in Finding of Fact No. 2 were immune from the tax during the periods involved.

5. There is no language contained in Articles 28 and 29 of the Tax Law, or any local laws, ordinances or resolutions under the authority of such latter article, which imposes sales or compensating use taxes on purchases by banks or banking institutions in a manner different than upon purchasers generally, nor is there any language contained therein which states that banks or banking institutions, whether state or national, are exempt from paying sales or compensating use taxes on its purchases; furthermore, paragraph (2) of subdivision (a) of section 1116 of the Tax Law grants to the United States of America and any of its agencies or instrumentalities as purchaser, user or consumer, an exemption only insofar as it is immune from taxation. Such paragraph reads as follows:

"Sec. 1116. Exempt organizations.--(a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

\* \* \*

"(2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons;"

6. As decided by the United States Supreme Court in First Agric. Nat. Bank of Berkshire County v. State Tax Comm., 392 U.S. 339, a state has no power to tax national banks unless specifically authorized by Congress and that Congress had not, prior to the expiration of the periods in issue, authorized the imposition of sales and use taxes; that the New York Court of Appeals in the case of Liberty Nat. Bank & Trust Co. v. William K. Buscaglia, 23 N Y 2d 933, reversing 21 N Y 2d 357;

affirmed a lower court order exempting national banks from sales and use taxes upon the constraint of the First Agric. Nat. Bank of Berkshire County decision supra, and of Dickinson v. First Nat. Bank of Homestead, 393 U.S. 409; that accordingly the taxes imposed by Article 28 and under the authority of Article 29 of the Tax Law of New York State were not among those permitted by Congress in R.S., Section 5219 (12 U.S.C. Section 548) and national banks were therefore immune from taxation under such Articles.

7. Section 4 of Article XVI of the Constitution of the State of New York, which Article was adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938, provides as follows:

"ARTICLE XVI

\* \* \*

"§ 4. Where the state has power to tax corporations incorporated under the laws of the United States there shall be no discrimination in the rates and method of taxation between such corporations and other corporations exercising substantially similar functions and engaged in substantially similar business within the state."

8. On December 24, 1969, immediately subsequent to the taxable periods herein, the law set forth in section 548 of Title 12 of the United States Code (R.S., Section 5219) was amended to permit the imposition by states of sales and compensating use taxes upon national banks; that from December 24, 1969 to date, by virtue of the provisions of the aforesaid Federal statute and paragraph(2) of subdivision (a) of section 1116 of the Tax Law of New York which exempted instrumentalities of the United States of America from sales and use taxes only if immune from taxation, national banks lost their immunity, and from December 24, 1969 to date sales and compensating use taxes have been imposed upon national banks; that the taxpayer is not contesting the payment of sales and compensating use taxes for any periods subsequent to December 23, 1969.

Based upon the foregoing the State Tax Commission hereby  
DETERMINES:

A. That the sales and compensating use taxes imposed by Article 28 and under the authority of Article 29 of the Tax Law are imposed upon purchasers generally.

B. That, accordingly, such taxes are general taxes and not imposed upon banks as a class; that such taxes are imposed without discrimination upon a general class of purchasers including banks. (Matter of Bank of Manhattan Co. v. Murphy, 293 N.Y. 515)

C. That neither the spirit nor the letter of section 4 of Article XVI of the Constitution of the State of New York is violated by the provisions of Articles 28 and 29 of the Tax Law and of any laws, ordinances or resolutions made under the authority of Article 29, which impose taxes without discrimination, upon a broad class in which banks are included, not because they are engaged in banking but because they are purchasers. (Matter of Bank of Manhattan Co. v. Murphy, 293 N.Y. 515)

D. That throughout the entire taxable period herein, the restriction set forth in section 4 of Article XVI of the Constitution of the State of New York had no application, and state banks remained subject to the sales and compensating use taxes, since such periods were prior in time to December 24, 1969, upon which date Congress granted to the states permission to impose sales and compensating use taxes on national banks. (Matter of Bank of Manhattan Co. v. Murphy, 293 N.Y. 515)

E. That any sales and compensating use taxes which may have been paid by the taxpayer during the periods involved were

required to be paid; accordingly, the State Tax Commission properly denied the taxpayer's application for refund, and such denial of refund is hereby affirmed.

STATE TAX COMMISSION

DATED: ALBANY, NEW YORK  
DECEMBER 22, 1971

BY

Norman Gallivan

Bruce Manley

Milton Korman

STATE OF NEW YORK

STATE TAX COMMISSION

----- -x  
IN THE MATTER OF APPLICATION OF  
IRVING TRUST COMPANY  
:

For Refund of Sales and Use Taxes imposed pursuant  
to Article 28 and under the authority of Article 29  
of the Tax Law, and imposed pursuant to New York City  
Local Law No. 73 of 1965, as amended, for the period  
commencing August 1, 1965 and ending December 31, 1965,  
for the calendar years 1966, 1967 and 1968 and for the  
period commencing January 1, 1969 and ending December 23,  
1969.  
:

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STIPULATION OF FACTS

IT IS HEREBY STIPULATED AND AGREED that the  
following facts are applicable with respect to all the  
above-captioned periods and further that such facts  
shall be taken in lieu of a formal hearing as the basis  
for any determination by the State Tax Commission,  
Irving Trust Company (hereinafter called "the taxpayer")  
and the State Tax Commission having waived the right to  
present any further evidence at a hearing or to make  
any further examination or inquiry except as set forth  
below:

1. The taxpayer filed applications for refund  
of sales and compensating use taxes on tangible personal  
property, services and other items purchased or used by  
it within this State, such taxes being imposed under the

laws specified in the caption hereof.

2. Such applications for refund, copies of which are hereto attached and marked Exhibits A1, A2, A3, A4, and A5, were duly and timely filed pursuant to section 1139 of the Tax Law for the periods, in the amounts, and on the dates set forth below:

<u>PERIODS</u>	<u>AMOUNT</u>	<u>DATE</u>
August 1, 1965 through December 31, 1965	\$ 80,930.00	December 3, 1969
January 1, 1966 through December 31, 1966	200,640.00	December 3, 1969
January 1, 1967 through December 31, 1967	198,790.00	December 3, 1969
January 1, 1968 through December 31, 1968	258,810.00	December 3, 1969
January 1, 1969 through December 23, 1969	445,948.24	August 3, 1970

3. The first four applications for refund filed for the period August 1, 1965 through December 31, 1965 and for the calendar years 1966, 1967 and 1968 were denied by the State Tax Commission



on December 18, 1969, and the application for refund filed for the period January 1, 1969 through December 23, 1969 was denied by the State Tax Commission on September 1, 1970, copies of the letters by the State Tax Commission denying such applications being hereto attached and marked Exhibits B1 and B2.

4. The taxpayer, on March 10, 1970, duly and timely filed an application for a hearing by the State Tax Commission to review the denial of the refunds requested in the first four said applications, and on September 10, 1970 duly and timely filed an application for a hearing by the State Tax Commission to review the denial of the refund requested in the last said application, copies of the letters applying for a hearing being hereto attached and marked Exhibits C1 and C2.

5. The taxpayer is a commercial bank and trust company incorporated under the laws of the State of New York. It is now and was at all relevant times engaged in the commercial banking business in this State, primarily in the City of New York.

6. The taxpayer, during the periods involved, exercised substantially similar functions and engaged in substantially similar business as national banks in the State of New York incorporated under the laws of the United States.

7. The taxpayer, during the periods involved, was a purchaser of tangible personal property and services, including the following:

electronic computer equipment and services, office equipment, office furniture and furnishings, office supplies, check books and other bank forms, vaults, safe deposit boxes, automobiles and trucks, repairs, utilities, cleaning, maintenance supplies, medical supplies, publications, storage, printing and mailing, dining room and food service, and give-away premiums.

All of the property, and all other items purchased during the aforesaid periods by the taxpayer on which sales or compensating use taxes had been paid, are of

a description, nature and kind subject to the sales and compensating use taxes imposed by Article 28 and pursuant to the authority of Article 29 of the Tax Law in the case of persons subject to tax thereunder.

8. All of the aforesaid tangible personal property, services and items are similar in description, nature and kind to those purchased or used in this State by purchasers generally and upon which taxes have been lawfully due and owing and paid by such purchasers, whether or not such purchasers were doing a banking business or residing in, doing business in or incorporated in the State of New York or under the laws thereof; provided, however, that this paragraph shall not be construed as a stipulation as to whether or not such taxes were lawfully due and owing and paid by purchasers doing a banking business in the State of New York in the manner set forth in paragraph 6 of this stipulation.

9. No determination denying a refund of tax shall be made by the State Tax Commission on the ground that proof of payment of tax by the taxpayer has not been shown, unless the taxpayer is first afforded an opportunity to present proof of such payment

acceptable to the State Tax Commission.

10. Before any refund of taxes can be made, the taxpayer shall first be required to submit proof that the taxes have been paid by it. Furthermore, before any refund can be made, the State Tax Commission shall have the right to examine into the proof offered by the taxpayer and to audit the books and records of the taxpayer to ascertain the amount of taxes paid. Nothing in this paragraph shall be construed to deprive the taxpayer of any lawful remedies to review the amount refunded in the event that a refund is made and the amount refunded is less than the amount requested by the taxpayer in its applications for refund.

11. With respect to any other periods for which the taxpayer has duly filed timely applications for refund of sales and use taxes and also timely applications for hearing in the event of a denial of the applications for refund, the State Tax Commission may defer the issuance of determinations for such periods until a final determination has been made by the State Tax Commission or by the courts with respect

to the periods herein.

STATE TAX COMMISSION

BY

*Edward J. [illegible]*  
Counsel for State Tax  
Commission

IRVING TRUST COMPANY

BY

*David Lach*  
Attorney for Taxpayer

STATE OF NEW YORK - DEPARTMENT OF TAXATION AND FINANCE  
SALES TAX BUREAU  
STATE CAMPUS, ALBANY, N.Y. 12226

AI

APPLICATION FOR CREDIT OR REFUND OF STATE AND LOCAL SALES OR USE TAX

TYPE OR PRINT NAME OF CLAIMANT <b>IRVING TRUST COMPANY</b>			IDENTIFICATION NO. (IF REGISTERED VENDOR) <b>13-51603620</b>	
STREET ADDRESS <b>1 Wall Street</b>			PERIOD COVERED BY CLAIM <b>August 1, 1965 through December 31, 1965</b>	
CITY <b>New York</b>	STATE <b>N.Y.</b>	ZIP CODE <b>10015</b>	REFUND CLAIMED <b>\$ 80,930.</b>	
NAME OF REPRESENTATIVE (IF ANY)			CREDIT CLAIMED <b>\$</b>	
STREET ADDRESS			IF CREDIT SHOWN ABOVE HAS ALREADY BEEN CLAIMED ON A RETURN, INDICATE PERIOD	
CITY			STATE	
ZIP CODE				


Give a full explanation below, including all facts on which your claim is based. Use additional sheets if necessary and submit all documents necessary to properly substantiate your claim.

Claim is hereby made for a refund of Sales and Compensating Use Taxes imposed under Articles 28 and 29 of the Tax Law, Chapter 60, Consolidated Laws, as amended.

Since Section 5219 of the Revised Statutes of the United States, as interpreted by the United States Supreme Court in First Agricultural National Bank v. State Tax Commission and by the New York State Court of Appeals in Liberty National Bank & Trust Company of Buffalo v. Taxation, prohibits imposition of the Sales and Compensating Use Taxes on national banks, we contend that the imposition of such tax on Irving Trust Company, a state-chartered bank, constitutes discrimination in a method of taxation between state-chartered banks and national banks which is illegal and unconstitutional under Article XVI, Section 4 of the New York State Constitution.

Detailed data and substantiation of this claim as required by the instructions on the reverse side hereof, are not being furnished herewith inasmuch as letter dated March 25, 1969 from Fred W. Tierney, Director Sales Tax Bureau, addressed to Sullivan & Cromwell, Esqs., New York, N.Y. (copy attached) temporarily suspends this requirement pending the conclusion of the litigation involved in this matter. Said detailed data will, however, be available at claimant's office at 1 Wall Street, New York, N.Y.

I, A.M. Brantz, the claimant named above, or partner, officer, or other authorized representative of such claimant, do hereby make application for refund and/or credit of sales or use tax, pursuant to the New York State Tax Law, and certify that all New York State sales and use taxes, if any, for which this claim is filed, have been paid; that no portion of the tax has been refunded or credited to me by any vendor; and that this claim does not include any items for which refund or credit was previously received.

SIGNATURE 	TITLE <b>Vice President</b>	DATE <b>December 3, 1969</b>
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## DEPARTMENT OF TAXATION AND FINANCE

SALES TAX BUREAU

TE TAX COMMISSION

JOSEPH H. MURPHY, PRESIDENT

A. BRUCE HANLEY

STATE CAMPUS

ALBANY, N. Y. 12226

TELEPHONE 474-2121

FREDERICK W. TIERNEY

DIRECTOR

ADDRESS YOUR REPLY TO

March 25, 1969

Sullivan & Cromwell, Esqs.  
18 Wall Street  
New York, N. Y. 10005

Attention: Kendyl K. Monroe, Esq.

Gentlemen:

Re: New York Clearing House Association

This is in reply to your letter dated March 18, 1969 written on behalf of the New York Clearing House Association regarding procedures for filing applications for refund by banks pending the conclusion of litigation concerning the sales tax status of national banks and State banks.


We have had correspondence with Mr. John F. Lea, Executive Vice-President of New York Clearing House, regarding this matter. Our letter dated October 15, 1968 contained much of the information relating to the procedures for filing applications for these refunds.

As suggested in your letter of March 18, 1969, in order to avoid the necessity of furnishing the detailed data and substantiation required by the instructions on Form ST-137, banks will be permitted to file applications on this form without submitting detailed schedules and other substantiating information pending the conclusion of the litigation referred to above. The claim on Form ST-137 should be filed before the expiration of the statute of limitations and will serve to protect the bank's right to refund until the matter is finally determined.

Although the time for assessing any additional sales tax and for claiming refund may be extended under the provisions of Section 1147(c) when a proper consent form is signed by the taxpayer, this procedure is not applicable under the circumstances involved. These provisions are intended to extend the time for assessment of tax when the three year limitation for audit does not allow sufficient time for the Tax Department to make a proper determination of tax. On this basis, the taxpayer is also granted an extension of time for filing an application for refund.

The bank's rights will be adequately protected when the type of application for refund mentioned above is filed within the time prescribed.

Very truly yours,



Fred W. Tierney  
Director, Sales Tax Bureau

STATE OF NEW YORK - DEPARTMENT OF TAXATION AND FINANCE  
SALES TAX BUREAU  
STATE CAMPUS, ALBANY, N.Y. 12226

A 2

## APPLICATION FOR CREDIT OR REFUND OF STATE AND LOCAL SALES OR USE TAX

TYPE OR PRINT NAME OF CLAIMANT			IDENTIFICATION NO. (IF REGISTERED VENDOR)	
IRVING TRUST COMPANY			13-5160320	
STREET ADDRESS			PERIOD COVERED BY CLAIM	
1 Wall Street			January 1, 1966 - December 31, 1966	
CITY	STATE	ZIP CODE	REFUND CLAIMED	
	N.Y.	10015	\$ 200,610.	
NAME OF REPRESENTATIVE (IF ANY)			CREDIT CLAIMED	
			\$	
STREET ADDRESS			IF CREDIT SHOWN ABOVE HAS ALREADY BEEN CLAIMED ON A RETURN, INDICATE	
CITY	STATE	ZIP CODE	PERIOD	

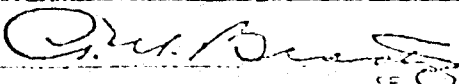
Give a full explanation below, including all facts on which your claim is based. Use additional sheets if necessary and submit all documents necessary to properly substantiate your claim.

Claim is hereby made for a refund of Sales and Compensating Use Taxes imposed under Articles 23 and 29 of the Tax Law, Chapter 60, Consolidated Laws, as amended.

Since Section 5219 of the Revised Statutes of the United States, as interpreted by the United States Supreme Court in First Agricultural National Bank v. State Tax Commission and by the New York State Court of Appeals in Liberty National Bank & Trust Company of Buffalo v. Board of Taxation, prohibits imposition of the Sales and Compensating Use Taxes on national banks, we contend that the imposition of such tax on Irving Trust Company, a state-chartered bank, constitutes discrimination in a method of taxation between state-chartered banks and national banks which is illegal and unconstitutional under Article XVI, Section 4 of the New York State Constitution.

Detailed data and substantiation of this claim as required by the instructions on the reverse side hereof, are not being furnished herewith inasmuch as letter dated March 25, 1969 from Fred W. Tierney, Director Sales Tax Bureau, addressed to Sullivan & Cronwell, Esqs., New York, N.Y. (copy attached) temporarily suspends this requirement pending the conclusion of the litigation involved in this matter. Said detailed data will, however, be available at claimant's office at 1 Wall Street, New York, N.Y.

I, A.M. Branta, the claimant named above, or partner, officer, or other authorized representative of such claimant, do hereby make application for refund and/or credit of sales or use tax, pursuant to the New York State Tax Law, and certify that all New York State sales and use taxes, if any, for which this claim is filed, have been paid; that no portion of the tax has been refunded or credited to me by any vendor; and that this claim does not include any items for which refund or credit was previously received.

SIGNATURE	TITLE	DATE
	Vice President	December 3, 1969

SEE INSTRUCTIONS ON THE BACK OF THIS FORM





STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

SALES TAX BUREAU

FREDERICK W. TIERNNEY  
DIRECTOR

STATE TAX COMMISSION

JOSEPH H. MURPHY, PRESIDENT  
A. BRUCE HANLEY

STATE CAMPUS  
ALBANY, N. Y. 12225

TELEPHONE 474-2121

ADDRESS YOUR REPLY TO

March 25, 1969

Sullivan & Cromwell, Esqs.  
48 Wall Street  
New York, N. Y. 10005

Attention Kendyl K. Monroe, Esq.

Gentlemen:

Re: New York Clearing House Association

This is in reply to your letter dated March 18, 1969 written on behalf of the New York Clearing House Association regarding procedures for filing applications for refund by banks pending the conclusion of litigation concerning the sales tax status of national banks and State banks.

We have had correspondence with Mr. John F. Lee, Executive Vice-President of New York Clearing House, regarding this matter. Our letter dated October 15, 1968 contained much of the information relating to the procedures for filing applications for these refunds.

As suggested in your letter of March 18, 1969, in order to avoid the necessity of furnishing the detailed data and substantiation required by the instructions on Form ST-137, banks will be permitted to file applications on this form without submitting detailed schedules and other substantiating information pending the conclusion of the litigation referred to above. The claim on Form ST-137 should be filed before the expiration of the statute of limitations and will serve to protect the bank's right to refund until the matter is finally determined.

Although the time for assessing any additional sales tax and for claiming refund may be extended under the provisions of Section 1147(c) when a proper consent form is signed by the taxpayer, this procedure is not applicable under the circumstances involved. These provisions are intended to extend the time for assessment of tax when the three year limitation for audit does not allow sufficient time for the Tax Department to make a proper determination of tax. On this basis, the taxpayer is also granted an extension of time for filing an application for refund.

The bank's rights will be adequately protected when the type of application for refund mentioned above is filed within the time prescribed.

Very truly yours,

Fred W. Tiernney

Director, Sales Tax Bureau

STATE OF NEW YORK - DEPARTMENT OF TAXATION AND FINANCE  
SALES TAX BUREAU  
STATE CAMPUS, ALBANY, N.Y. 12225

A 3

## APPLICATION FOR CREDIT OR REFUND OF STATE AND LOCAL SALES OR USE TAX

## TYPE OR PRINT

NAME OF CLAIMANT <b>IRVING TRUST COMPANY</b>			IDENTIFICATION NO. (IF REGISTERED VENDOR) <b>13-5160320</b>	
STREET ADDRESS <b>1 Wall Street</b>			PERIOD COVERED BY CLAIM <b>January 1, 1967 - December 31, 1967</b>	
CITY <b>New York</b>	STATE <b>N.Y.</b>	ZIP CODE <b>10015</b>	REFUND CLAIMED <b>\$ 168,700.</b>	
NAME OF REPRESENTATIVE (IF ANY)			CREDIT CLAIMED <b>\$</b>	
STREET ADDRESS			IF CREDIT SHOWN ABOVE HAS ALREADY BEEN CLAIMED ON A RETURN, INDICATE	
CITY	STATE	ZIP CODE	PERIOD	

Give a full explanation below, including all facts on which your claim is based. Use additional sheets if necessary and submit all documents necessary to properly substantiate your claim.

Claim is hereby made for a refund of Sales and Compensating Use Taxes imposed under Articles 28 and 29 of the Tax Law, Chapter 60, Consolidated Laws, as amended.

Since Section 5219 of the Revised Statutes of the United States, as interpreted by the United States Supreme Court in First Agricultural National Bank v. State Tax Commission and by the New York State Court of Appeals in Liberty National Bank & Trust Company of Buffalo v. Ruscaglia, prohibits imposition of the Sales and Compensating Use Taxes on national banks, we contend that the imposition of such tax on Irving Trust Company, a state-chartered bank, constitutes discrimination in a method of taxation between state-chartered banks and national banks which is illegal and unconstitutional under Article XVI, Section 4 of the New York State Constitution.

Detailed data and substantiation of this claim as required by the instructions on the reverse side hereof, are not being furnished herewith inasmuch as letter dated March 25, 1969 from Fred W. Tierney, Director Sales Tax Bureau, addressed to Sullivan & Cromwell, Esqs., New York, N.Y. (copy attached) temporarily suspends this requirement pending the conclusion of the litigation involved in this matter. Said detailed data will, however, be available at claimant's office at 1 Wall Street, New York, N.Y.

I, A.M. Brantz, the claimant named above, or partner, officer, or other authorized representative of such claimant, do hereby make application for refund and/or credit of sales or use tax, pursuant to the New York State Tax Law, and certify that all New York State sales and use taxes, if any, for which this claim is filed, have been paid; that no portion of the tax has been refunded or credited to me by any vendor; and that this claim does not include any items for which refund or credit was previously received.

SIGNATURE



TITLE

Vice President

DATE

December 3, 1969

SEE INSTRUCTIONS ON THE BACK OF THIS FORM

## DEPARTMENT OF TAXATION AND FINANCE

SALES TAX BUREAU

FREDERICK W. TIERNNEY

DIRECTOR

STATE TAX COMMISSION

STATE CAMPUS

ALBANY, N. Y. 12226

TELEPHONE 474-2121

ADDRESS YOUR REPLY TO

March 25, 1969

Sullivan & Cromwell, Esqs.  
48 Wall Street  
New York, N. Y. 10005

Attention: Kendyl K. Monroe, Esq.

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As suggested in your letter of March 18, 1969, in order to avoid the necessity of furnishing the detailed data and substantiation required by the instructions on Form ST-137, banks will be permitted to file applications on this form without submitting detailed schedules and other substantiating information pending the conclusion of the litigation referred to above. The claim on Form ST-137 should be filed before the expiration of the statute of limitations and will serve to protect the bank's right to refund until the matter is finally determined.

Although the time for assessing any additional sales tax and for claiming refund may be extended under the provisions of Section 1147(c) when a proper consent form is signed by the taxpayer, this procedure is not applicable under the circumstances involved. These provisions are intended to extend the time for assessment of tax when the three year limitation for audit does not allow sufficient time for the Tax Department to make a proper determination of tax. On this basis, the taxpayer is also granted an extension of time for filing an application for refund.

The bank's rights will be adequately protected when the type of application for refund mentioned above is filed within the time prescribed.

Very truly yours,



Fred W. Tiernney  
Director, Sales Tax Bureau

STATE OF NEW YORK - DEPARTMENT OF TAXATION AND FINANCE  
SALES TAX BUREAU  
STATE CAMPUS, ALBANY, N.Y. 12226

A4

## APPLICATION FOR CREDIT OR REFUND OF STATE AND LOCAL SALES OR USE TAX

TYPE OR PRINT NAME OF CLAIMANT <b>IRVING TRUST COMPANY</b>			IDENTIFICATION NO. (IF REGISTERED VENDOR) <b>13-51603220</b>
STREET ADDRESS <b>1 Wall Street</b>			PERIOD COVERED BY CLAIM <b>January 1, 1968 - December 31, 1968</b>
CITY <b>New York</b>	STATE <b>N.Y.</b>	ZIP CODE <b>10015</b>	REFUND CLAIMED <b>\$ 258,810.</b>
NAME OF REPRESENTATIVE (IF ANY)			CREDIT CLAIMED <b>\$</b>
STREET ADDRESS			IF CREDIT SHOWN ABOVE HAS ALREADY BEEN CLAIMED ON A RETURN, INDICATE
CITY	STATE	ZIP CODE	PERIOD

Give a full explanation below, including all facts on which your claim is based. Use additional sheets if necessary and submit all documents necessary to properly substantiate your claim.

Claim is hereby made for a refund of Sales and Compensating Use Taxes imposed under Articles 28 and 29 of the Tax Law, Chapter 60, Consolidated Laws, as amended.

Since Section 5219 of the Revised Statutes of the United States, as interpreted by the United States Supreme Court in First Agricultural National Bank v. State Tax Commission and by the New York State Court of Appeals in Liberty National Bank & Trust Company of Buffalo v. Euseglin, prohibits imposition of the Sales and Compensating Use Taxes on national banks, we contend that the imposition of such tax on Irving Trust Company, a state-chartered bank, constitutes discrimination in a method of taxation between state-chartered banks and national banks which is illegal and unconstitutional under Article XVI, Section 4, of the New York State Constitution.

Detailed data and substantiation of this claim as required by the instructions on the reverse side hereof, are not being furnished herewith inasmuch as letter dated March 25, 1969 from Fred W. Tierney, Director Sales Tax Bureau, addressed to Sullivan & Cromwell, Esqs., New York, N.Y. (copy attached) temporarily suspends this requirement pending the conclusion of the litigation involved in this matter. Said detailed data will, however, be available at claimant's office at 1 Wall Street, New York, N.Y.

I, A.M. Prantz, the claimant named above, or partner, officer, or other authorized representative of such claimant, do hereby make application for refund and/or credit of sales or use tax, pursuant to the New York State Tax Law, and certify that all New York State sales and use taxes, if any, for which this claim is filed, have been paid; that no portion of the tax has been refunded or credited to me by any vendor; and that this claim does not include any items for which refund or credit was previously received.

SIGNATURE



TITLE

Vice President

DATE

December 5, 1968

SEE INSTRUCTIONS ON THE BACK OF THIS FORM



STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

SALES TAX BUREAU

FREDERICK W. TIERNNEY  
DIRECTOR

STATE TAX COMMISSION

JOSEPH H. MURPHY, PRESIDENT

A. BRUCE HANLEY

STATE CAMPUS  
ALBANY, N. Y. 12225

TELEPHONE 474-2121

ADDRESS YOUR REPLY TO

March 25, 1969

Sullivan & Cromwell, Esqs.  
48 Wall Street  
New York, N. Y. 10005

Attention Kendyl K. Monroe, Esq.

Gentlemen:

Re: New York Clearing House Association

This is in reply to your letter dated March 18, 1969 written on behalf of the New York Clearing House Association regarding procedures for filing applications for refund by banks pending the conclusion of litigation concerning the sales tax status of national banks and State banks.

We have had correspondence with Mr. John F. Lee, Executive Vice-President of New York Clearing House, regarding this matter. Our letter dated October 19, 1968 contained much of the information relating to the procedures for filing applications for these refunds.

As suggested in your letter of March 18, 1969, in order to avoid the necessity of furnishing the detailed data and substantiation required by the instructions on Form ST-137, banks will be permitted to file applications on this form without submitting detailed schedules and other substantiating information pending the conclusion of the litigation referred to above. The claim on Form ST-137 should be filed before the expiration of the statute of limitations and will serve to protect the bank's right to refund until the matter is finally determined.

Although the time for assessing any additional sales tax and for claiming refund may be extended under the provisions of Section 1147(c) when a proper consent form is signed by the taxpayer, this procedure is not applicable under the circumstances involved. These provisions are intended to extend the time for assessment of tax when the three year limitation for audit does not allow sufficient time for the Tax Department to make a proper determination of tax. On this basis, the taxpayer is also granted an extension of time for filing an application for refund.

The bank's rights will be adequately protected when the type of application for refund mentioned above is filed within the time proscribed.

Very truly yours,

Fred W. Tiernney  
Director, Sales Tax Bureau

STAT NEW YORK - DEPARTMENT OF TAXATION AND ANCE  
SALES TAX BUREAU  
STATE CAMPUS, ALBANY, N.Y. 12226

A5

## APPLICATION FOR CREDIT OR REFUND OF STATE AND LOCAL SALES OR USE TAX

TYPE OR PRINT  
NAME OF CLAIMANT

IRVING TRUST COMPANY

IDENTIFICATION NO. (IF REGISTERED VENDOR)

13-51603820

STREET ADDRESS

1 Wall Street

PERIOD COVERED BY CLAIM

January 1, 1969 - December 31, 1969

CITY

STATE

ZIP CODE

NAME OF REPRESENTATIVE (IF ANY)

New York

N.Y.

10015

REFUND CLAIMED

\$ 145,948.24

CREDIT CLAIMED

\$

STREET ADDRESS

CITY

STATE

ZIP CODE

IF CREDIT SHOWN ABOVE HAS ALREADY BEEN CLAIMED ON A RETURN, INDICATE

PERIOD

Give a full explanation below, including all facts on which your claim is based. Use additional sheets if necessary and submit all documents necessary to properly substantiate your claim.

Claim is hereby made for a refund of Sales and Compensating Use Taxes imposed under Articles 28 and 29 of the Tax Law, Chapter 60, Consolidated Laws, as amended.

Since Section 5219 of the Revised Statutes of the United States, as interpreted by the United States Supreme Court in First Agricultural National Bank v. State Tax Commission and by the New York State Court of Appeals in Liberty National Bank & Trust Company of Buffalo v. Puzosaglia, prohibits imposition of the Sales and Compensating Use Taxes on national banks. we contend that the imposition of such tax on Irving Trust Company, a state-chartered bank, constitutes discrimination in a method of taxation between state-chartered banks and national banks which is illegal and unconstitutional under Article XVI, Section 4 of the New York State Constitution.

Detailed data and substantiation of this claim as required by the instructions on the reverse side hereof, are not being furnished herewith inasmuch as letter dated March 25, 1969 from Fred W. Tierney, Director Sales Tax Bureau, addressed to Sullivan & Cronwell, Esqs., New York, N.Y. (copy attached) temporarily suspends this requirement pending the conclusion of the litigation involved in this matter. Said detailed data will, however, be available at claimant's office at 1 Wall Street, New York, N.Y.

I, A.M. Brantz, the claimant named above, or partner, officer, or other authorized representative of such claimant, do hereby make application for refund and/or credit of sales or use tax, pursuant to the New York State Tax Law, and certify that all New York State sales and use taxes, if any, for which this claim is filed, have been paid; that no portion of the tax has been refunded or credited to me by any vendor; and that this claim does not include any items for which refund or credit was previously received.

SIGNATURE

*A.M. Brantz*

TITLE

*Vice President*

DATE

*August 3, 1970*

SEE INSTRUCTIONS ON THE BACK OF THIS FORM



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

SALES TAX BUREAU

FREDERICK W. TIERNEY

DIRECTOR

ADDRESS YOUR REPLY

STATE TAX COMMISSION  
JOSEPH H. MURPHY, PRESIDENT  
A. BRUCE HANLEY

STATE CAMPUS  
ALBANY, N. Y. 12226  
TELEPHONE 474-2121

March 25, 1969

Sullivan & Cronwell, Esqs.  
48 Wall Street  
New York, N. Y. 10005

Attention Kendyl K. Monroe, Esq.

Gentlemen:

Re: New York Clearing House Association

This is in reply to your letter dated March 18, 1969 written on behalf of the New York Clearing House Association regarding procedures for filing applications for refund by banks pending the conclusion of litigation concerning the sales tax status of national banks and State banks.

We have had correspondence with Mr. John F. Lee, Executive Vice-President of New York Clearing House, regarding this matter. Our letter dated October 15, 1968 contained much of the information relating to the procedures for filing applications for these refunds.

As suggested in your letter of March 18, 1969, in order to avoid the necessity of furnishing the detailed data and substantiation required by the instructions on Form ST-137, banks will be permitted to file applications on this form without submitting detailed schedules and other substantiating information pending the conclusion of the litigation referred to above. The claim on Form ST-137 should be filed before the expiration of the statute of limitations and will serve to protect the bank's right to refund until the matter is finally determined.

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The bank's rights will be adequately protected when the type of application for refund mentioned above is filed within the time prescribed.

Very truly yours,

Fred W. Tierney  
Director, Sales Tax Bureau



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

B1  
SALES TAX BUREAU

FREDERICK W. TIERNEY

DIRECTOR

STATE TAX COMMISSION

STATE CAMPUS  
ALBANY, N. Y. 12225

TELEPHONE 474-2121

ADDRESS YOUR REPLY TO

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

December 18, 1969

Irving Trust Company  
One Wall Street  
New York, New York 10015

Attention Albert B. Braatz, Vice President

Claim for Refund: 1965 - 1968  
Total Amount \$739,170.00

Gentlemen:

Please be advised that your claim for a refund of sales tax, in the amount of \$739,170.00, is hereby being denied in full.

In the opinion of our legal counsel, even though national banks may be exempt from the New York State and local sales and use taxes under the provisions of R.S. 5219, 12 U.S.C. 548 as interpreted in First Agricultural National Bank of Berkshire County vs. State Tax Commission, 392 U.S. 339, 20 L ed. 1138 and Liberty National Bank and Trust Co. vs. Euscaglia, 23 N.Y. 2d 933. State banks are still liable for these taxes. This conclusion is based on the interpretation by the Court of Appeals of Article XVI, Section 4 of the New York State Constitution in Matter of Bank of Manhattan Company, 293 N.Y. 515.

If you agree to the denial, please sign the statement at the bottom of either copy of this letter and mail it to the New York State Sales Tax Bureau, Audit and Review Unit, Building 8A, State Campus, Albany, New York 12226.

This determination, denying your claim in full, shall be final and irrevocable unless you apply to the State Tax Commission for a hearing before a Department hearing officer within ninety (90) days from the date of this letter in accordance with the provisions of Section 1139(b) of the Tax Law.

Very truly yours,

*F. W. Tierney*

Fred W. Tierney  
Director, Sales Tax Bureau

The denial indicated above is acceptable to me. I hereby withdraw my application for refund filed on December 3, 1969 in the amount of \$739,170.00.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date





STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

SALES TAX BUREAU

FREDERICK W. TIERNEY

DIRECTOR

ADDRESS YOUR REPLY TO

Approval & Review Unit

STATE CAMPUS  
ALBANY, N. Y. 12226

TELEPHONE 474-2121

SEP 1 1970

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

Irving Trust Company  
One Wall Street  
New York, New York 10015

Gentlemen:

Reference is made to your claim for refund in the amount of \$445,948.24 dated August 3, 1970 and our subsequent correspondence.

Please be advised that your claim is being denied in full.

In the opinion of our legal counsel, even though national banks may be exempt from the New York State and local sales and use taxes under the provisions of R.S. 5219, 12 U.S.C. 548 and interpreted in First Agricultural National Bank of Berkshire County vs. State Tax Commission, 392 US 339, 20 L ed. 1138 and Liberty National Bank and Trust Co. vs. Buscaglia, 23 N.Y. 2d 933, State banks are still liable for these taxes. The conclusion is based on the interpretations by the Court of Appeals of Article XVI, Section 4 of the New York State Constitution in Matter of Bank of Manhattan Company, 293 N.Y. 515.

If you agree to the denial, please sign the statement at the bottom of either copy of this letter and mail it to the New York State Sales Tax Bureau, Approval and Review Unit, Building 8, State Campus, Albany, New York 12226.

This determination denying your claim in full, as indicated above, shall be final and irrevocable unless you apply to the State Tax Commission, Hearing Unit, Post Office Box 5028, Albany, New York 12205 for a hearing within ninety (90) days from the date of this letter in accordance with the provisions of Section 1139(b) of the Tax Law.

If you apply for a hearing, you may at the same time request an informal conference with a representative of the Sales Tax Bureau to be held prior to placing your application on the Hearing Unit hearing calendar.

Very truly yours,

Chief, Approval and Review Unit

JLB:sem

The denial indicated above is acceptable to me. I hereby withdraw my application for refund filed on August 3, 1970 in the amount of \$445,948.24.

Signature

Date

March 10, 1970

State Tax Commission  
Albany, New York 12226

Claims for Refund: 1965-1968  
Total Amount \$739,170.00

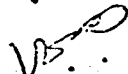
Gentlemen:

Receipt is hereby acknowledged of a letter dated December 18, 1969 from Fred W. Tierney, Director, Sales Tax Bureau (copy attached) concerning our Claims for Refund of New York State and local sales and use taxes filed on December 3, 1969 in the amount of \$739,170.00.

As provided in the aforementioned letter of December 18, 1969 we hereby request a hearing before a Department Hearing Officer with respect to the aforementioned claims in order that we may present additional arguments to support our Claims.

Kindly acknowledge receipt of this letter on the attached copy.

Very truly yours



A. M. BSAATZ

Vice President

Enc. .  
AMB:EG

Registered Mail

September 10, 1970

State Tax Commission  
Hearing Unit  
Post Office Box 5028  
Albany, New York 12205

Claim for Refund: January 1, 1969 to December 23, 1969  
Total Amount: \$445,948.24

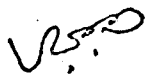
Gentlemen:

Receipt is hereby acknowledged of a letter dated September 1, 1970 from Arthur M. Raskin, Chief, Approval and Review Unit, Sales Tax Bureau (copy attached) denying our Claim for Refund of New York State and local sales and use taxes filed on August 2, 1970 in the amount of \$445,948.24.

As provided in the aforementioned letter of September 1, 1970 we hereby request a hearing before the Hearing Unit with respect to said claim in order that we may present additional arguments to support our claim. We also request an informal conference with a representative of the Sales Tax Bureau prior to placing our application on the Hearing Unit calendar.

Kindly acknowledge receipt of this letter on the attached copy.

Very truly yours



A. M. BRAATZ

Vice President

Enc.  
AMB:WG

Registered Mail

*Receipt Acknowledged*  
*for Braatz*  
*Sept 14/70*

RECEIVED  
NEW YORK STATE  
INCOME TAX BUREAU

SEP 14 1970

REVIEW UNIT  
ALBANY OFFICE