

STATE OF NEW YORK  
STATE TAX COMMISSION

----- :  
IN THE MATTER OF APPLICATION OF :  
MANUFACTURERS HANOVER TRUST COMPANY :  
For Refund of Sales and Use Taxes imposed : FORMAL  
pursuant to Article 28 and under the : DETERMINATION  
authority of Article 29 of the Tax Law, :  
and imposed pursuant to New York City Local :  
Law No. 73 of 1965, as amended, and the :  
local laws, ordinances or resolutions of :  
the Counties of Nassau and Suffolk for the :  
period commencing August 1, 1965 and ending :  
December 31, 1968. :  
-----

The taxpayer, Manufacturers Hanover Trust Company, having duly and timely filed applications for refund of sales and compensating use taxes for the period August 1, 1965 through December 31, 1968 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 the local laws, ordinances or resolutions of the Counties of Nassau and Suffolk; 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, Manufacturers Hanover 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, Manufacturers Hanover 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 Gallman  
Abigail Masley  
Milton Korman

STATE OF NEW YORK

STATE TAX COMMISSION

----- -x

IN THE MATTER OF APPLICATION OF :

MANUFACTURERS HANOVER 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, and the local laws, :  
ordinances or resolutions of the Counties of :  
Nassau and Suffolk for the period commencing :  
August 1, 1965 and ending December 31, 1968. :  
:

----- -x

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, Manufacturers Hanover 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 an application 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 application for refund, a copy of which is hereto attached and marked Exhibit A, was duly and timely filed pursuant to section 1139 of the Tax Law for the period, in the amount, and on the date set forth below:

<u>PERIOD</u>	<u>AMOUNT</u>	<u>DATE</u>
August 1, 1965 through December 31, 1966	\$2,037,122.59	December 3, 1969

3. Such application for refund was denied by the State Tax Commission on January 14, 1970, a copy of the letter by the State Tax Commission denying such application being hereto attached and marked Exhibit B.

4. The taxpayer, on April 9, 1970, duly and timely filed an application for a hearing by the State Tax Commission to review the denial of the refund of said application, a copy of the letter applying for a hearing being hereto attached and marked Exhibit C.

7



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

11

to the periods herein.

STATE TAX COMMISSION

BY *Ernest J. Lee*  
Counsel for State Tax  
Commission

MANUFACTURERS HANOVER TRUST COMPANY

BY *David Lachs*  
Attorney for Taxpayer

STATE OF NEW YORK  
SALES TAX BUREAU  
STATE CAMPUS, ALBANY, N.Y. 12226

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

TYPE OR PRINT			IDENTIFICATION NO. (IF REGISTERED VENDOR)	
NAME OF CLAIMANT Manufacturers Hanover Trust Company			13-5227302	
STREET ADDRESS 350 Park Avenue			PERIOD COVERED BY CLAIM Aug. 1, 1965 to Dec. 31, 1968	
CITY New York	STATE New York	ZIP CODE 10022	REFUND CLAIMED \$2,837,122.59	
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 for refund of \$2,837,122.59 and statutory interest, if any, is made for sales and compensating use tax paid to the State of New York or any of its political subdivisions as imposed by Article 28 or Article 29, Tax Law Ch. 60, C.L. as enacted by Chapter 93, Laws 1965 and amended to date for the years set forth below.

The taxpayer claims that said tax has been illegally and unconstitutionally imposed in accordance with the U.S. Supreme Court decision in the case of First Agricultural National Bank of Berkshire County v. Tax Commission (Docket No. 755, June 17, 1968; 38 S. CT 2173); the N.Y. Court of Appeals decision of February 19, 1969, reversing its prior decision in Liberty National Bank and Trust Company v. Buscaglia as Director, Division of Sales Tax, County of Erie and New York State Tax Commission (21 N.Y. 2d 357) when read in conjunction with the provisions of Article XVI, Section 4 of the New York State Constitution.

1965	\$ 339,839.31
1966	790,753.33
1967	886,556.82
1968	819,973.08
	<u>\$2,837,122.59</u>

At this time, taxpayer is not submitting detailed schedules or substantiation as required by the instructions on Form ST-137 in accordance with letter (attached) from Fred W. Tierney, Director, Sales Tax Bureau dated March 25, 1969.

I, Alvin M. Simon, 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 <u>Alvin M. Simon</u>	TITLE Assistant Controller	DATE December 5, 1968
------------------------------------	-------------------------------	--------------------------



STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

SALES TAX BUREAU

FREDERICK W. TIERNNEY

DIRECTOR

STATE TAX COMMISSION

JOSEPH M. MURPHY, PRESIDENT

A. BRUCE HANLEY

STATE CAMPUS  
ALBANY, N. Y. 12225

TELEPHONE 474-2121

March 25, 1969

ADDRESS YOUR REPLY TO

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.

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

EXHIBIT A

SALES TAX BUREAU

FREDERICK W. TIERNEY

DIRECTOR

ADDRESS YOUR REPLY TO  
Audit & Review Unit

DEPARTMENT OF REVENUE AND FINANCE

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

JAN 14 1970

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

Manufacturers Hanover Trust Co.  
350 Park Avenue  
New York, New York 10022

Attention Mr. Alvin M. Simon,  
Assistant Controller

Re: Claim For Refund  
\$2,837,122.59, dated  
December 5, 1969

Gentlemen:

Please be advised that your claim for refund of sales tax, in the amount of \$2,837,122.59, 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. 540 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. Buscaglia, 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 within 90 days from the date of this letter in accordance with the provisions of Section 1139(b) of the Tax Law.

Very truly yours,

*Arthur M. Parker*  
Assistant Chief  
Audit and Review Unit

JLB/da

The denial indicated above is acceptable to me. I hereby withdraw my application for refund filed on December 5, 1969 in the amount of \$2,837,122.59.

Signature

Date



MANUFACTURERS HANOVER TRUST COMPANY

350 PARK AVENUE, NEW YORK, N. Y. 10022

April 9, 1970

State of New York, State Tax Commission

Department of Taxation and Finance

State Campus

Albany, New York 12226

Att: Mr. Arthur M. Raskin, Ass't. Chief - Audit and Review Unit

Gentlemen:

Pursuant to your letter of January 14, 1970 (copy enclosed)  
and Section 1139(b) of the New York State Tax Law, we hereby  
formally request a hearing before the State Tax Commission.

Very truly yours,

*Alvin M. Simon*

Alvin M. Simon  
Assistant Controller