

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF APPLICATION OF :  
MARINE MIDLAND BANK--NEW YORK :  
(formerly named Marine Midland Grace Trust :  
Company of New York) :  
: FORMAL  
For Refund of Sales and Use Taxes imposed :  
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 :  
ordinance of the County of Nassau for the :  
period commencing August 1, 1965 and ending :  
November 30, 1969. :  
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The taxpayer, Marine Midland Bank--New York, having  
duly and timely filed applications for refund of sales and  
compensating use taxes for the period August 1, 1965 through  
November 30, 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 the  
ordinance of the County of Nassau; 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, Marine Midland Bank--New York,  
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, Marine Midland Bank--New York, 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, 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

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"§ 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 J. Gellman*  
*Bruce Stanley*  
*Milton Kamm*

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF APPLICATION OF  
:  
MARINE MIDLAND BANK--NEW YORK,  
:(formerly named Marine Midland Grace Trust  
:Company of New York)  
:  
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 ordinance :  
of the County of Nassau for the period commencing  
August 1, 1965 and ending November 30, 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, Marine Midland Bank--New York (formerly named Marine Midland Grace Trust Company of New York and 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 November 30, 1969	\$459,166.21	December 17, 1969

3. Such application for refund was denied by the State Tax Commission on January 12, 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.

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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, 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 V. Felt*  
Counsel for State Tax  
Commission

MARINE MIDLAND BANK—NEW YORK

BY *David Sachs*  
Attorney for Taxpayer

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

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

TYPE OR PRINT NAME OF CLAIMANT			IDENTIFICATION NO. (IF REGISTERED VENDOR)	
Marina Midland Grace Trust Company of New York			13-5229605	
STREET ADDRESS			PERIOD COVERED BY CLAIM	
40 Broadway			2/1/65 to 11/30/69	
CITY	STATE	ZIP CODE	REFUND CLAIMED	
New York	New York	10015	\$ 459,166.21	
NAME OF REPRESENTATIVE (IF ANY)			CREDIT CLAIMED	
			\$ -0-	
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.

Claimant has paid New York State and local sales taxes in the amount of \$459,166.21 since August 1, 1965.

On June 17, 1968, the United States Supreme Court decided the case of First Agricultural National Bank of Berkshire County v. State Tax Commission, 20 L. Ed. 2d 1138. The Court held that national banks are not now and have not previously been liable for state and local sales taxes. This decision is made applicable to New York State banks by Article XVI, Section 4 of the New York State Constitution. Accordingly, the above sales taxes have been illegally and unconstitutionally collected, and claim for refund is hereby made.

This refund claim is authorized by New York Tax Law §1139.

I, Richard R. Lin, 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
<i>Richard R. Lin</i>	Vice Pres. & Deputy. Compt	December 17, 1968

SEE INSTRUCTIONS ON THE BACK OF THIS FORM



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE CAMPUS  
ALBANY, N. Y. 12226

TELEPHONE 474-2121

JAN 12 1970

SALES TAX BUREAU

FREDERICK W. TIERNEY

DIRECTOR

ADDRESS YOUR REPLY TO  
Audit & Review Unit

STATE TAX COMMISSION

ORMAN F. GALLMAN, ACTING PRESIDENT

BRUCE MANLEY

ELTON KOERNER

Marine Midland Grace Trust Company of New York  
140 Broadway  
New York, New York 10015

Attention Richard R. Link, Vice Pres. &  
Depty. Compt.

Claim for Refund

8/1/65 to 11/30/69

Total Amount \$459,166.21

Gentlemen:

Please be advised that your claim for a refund of sales tax, in the amount of \$459,166.21, 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. 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 S, 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,

Assistant Chief  
Audit and Review Unit

JLB:aa

The denial indicated above is acceptable to me. I hereby withdraw my application for refund filed on December 17, 1969 in the amount of \$459,166.21.

Signature

Date

C  
April 9, 1970

State of New York  
Department of Taxation and Finance  
State Campus  
Albany, New York 12226

Gentlemen:

Pursuant to your letter of January 12, 1970, advising us of your denial of our claim for refund of sales tax in the amount of \$459,166.21 covering the period 3/1/65 to 11/30/69, we wish to apply for a hearing.

Very truly yours,

/mss

Vice President & Deputy Comptroller

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