

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING GOLOMBECK

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales and Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~XXXXXX~~ or Period(s) :  
6/1/75 -- 8/31/75

State of New York  
County of Albany

Bruce Batchelor , 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 26 day of April , 1977, ~~she~~ served the within  
Notice of Determination by ~~(XXXXXX)~~ mail upon Irving Golombek

~~(XXXXXX)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Irving Golombek  
508 Avenue F  
Brooklyn, New York 11218

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(XXXXXX)~~  
~~(XXXXXX)~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(XXXXXX)~~ petitioner.

Sworn to before me this

26 day of April , 1977.

Bruce Batchelor

Janet Back



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE.

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

April 26, 1977

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **457-1723**

Mr. Irving Colombeck  
508 Avenue F  
Brooklyn, New York 11218

Dear Sir:

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

Please take further notice that pursuant to  
Section(s) **1139 & 1243** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

**FRANK J. PUCCIA**

**Supervisor of**

**Small Claims Hearings**

Enc.

cc: ~~Petitioner's Representative:~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Application	:	
of	:	
IRVING GOLOMBECK	:	DETERMINATION
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for	:	
the Period June 1, 1975 through	:	
August 31, 1975.	:	

---

Applicant, Irving Golombeck, 508 Avenue F, Brooklyn, New York 11218, filed an application for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1975 through August 31, 1975.

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on October 18, 1976. Applicant, Irving Golombeck, appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq. of counsel).

ISSUE

Whether applicant, Irving Golombeck, paid sales tax in the sum of \$207.00 on a capital improvement contract.

FINDINGS OF FACT

1. On March 18, 1976, applicant, Irving Golombeck, filed an application for credit or refund of state and local sales or use tax claiming that he erroneously paid \$207.00 of sales tax on a capital improvement contract.

2. The Sales Tax Bureau denied the aforesaid application on the grounds that sales tax was not separately stated on the invoice and was not collected by the contractor.

3. In a letter to applicant, Irving Golombeck, dated May 12, 1975, the contractor described the work to be performed and quoted a total price of \$2,880.00, "tax included." Said letter did not stipulate the amount of the tax included nor did it stipulate what the tax represented.

4. On June 6, 1975, applicant, Irving Golombeck, received an invoice from the contractor which showed that the total price of the contract in issue was \$2,880.00. Said invoice did not stipulate the breakdown of costs; it merely stated that the total price of the contract represented "labor and materials and tax."

5. The \$207.00 of sales tax claimed by applicant, Irving Golombeck, to have been paid to the contractor was computed by him on the basis of what he felt the sales tax would have been

if it were properly charged and stated on the invoice. The aforesaid invoice does not, in any manner, indicate such an amount.

CONCLUSIONS OF LAW

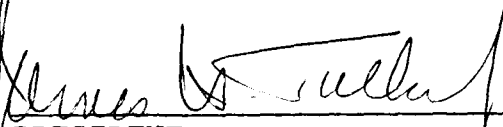
A. That applicant, Irving Golombeck, presented no evidence to indicate that the tax mentioned on the invoice with other cost elements of the contract and which was not separately stated or charged, was in fact sales tax on the entire sale rather than a cost incurred by the contractor in performance of the contract in issue.

B. That applicant, Irving Golombeck, has not sustained the burden of proof required to substantiate his claim for refund.


C. That the application for refund of Irving Golombeck is denied.

DATED: Albany, New York  
April 26, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER