

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

INNOCO, INC.

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 ~~Years~~ or Period(s) :
March 2, 1972 through March 15, 1973.

State of New York
County of Albany

John Huhn , 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 15th day of March , 1979 , she served the within
Notice of Determination by (~~certified~~) mail upon Innoco, Inc.

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Innoco, Inc.
1270-6th Avenue
New York, NY 10020

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 (~~representative~~
~~of the~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

15th day of March , 1979.

Mauryn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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INNOCO, INC.

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March 2, 1972 through March 15, 1973.

State of New York
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John Huhn , 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 15th day of March , 1979 , she served the within
Notice of Determination by ~~(certified)~~ mail upon Steve Baum, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Steve Baum, Esq.
c/o Paneth, Haber & Zimmerman
600 Third Avenue
New York, NY 10016
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 (representative
of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the (representative of the) petitioner.

Sworn to before me this

15th day of March , 1979.

Marilyn J. Lapineau

John Huhn



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

March 15, 1979

Innoco, Inc.
1270-6th Avenue
New York, NY 10020

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywat
Hearing Examiner

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
INNOCO, INC.	:	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 March 2, 1972 through	:	
March 15, 1973.	:	
	:	

Applicant, Innoco, Inc., 1270 6th Avenue, New York, New York 10020, 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 March 2, 1972 through March 15, 1973 (File No. 14125).

A small claims hearing was held before Raymond J. Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 6, 1978. Applicant appeared by Steven C. Baum, CPA. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether applicant, Innoco, Inc., was liable for New York State sales and use tax on the purchase of a yacht.

FINDINGS OF FACT

1. On December 24, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due of \$3,501.47, plus penalty and interest of \$2,135.90, for a total due of \$5,637.37. The assessment was based on applicant's purchase of a yacht.

2. On March 2, 1972, Innoco, Inc. purchased the yacht "Inspiration" then berthed in Miami, Florida, from S.T. Grand, Inc. for \$50,021.26. Applicant, Innoco, Inc., and S.T. Grand, Inc. were related in that both corporations shared the same offices in New York City and had the same principal stockholders. Neither corporation had an office in Florida.

3. Applicant purchased the yacht for the purpose of using it for charter service. However, applicant discovered that the yacht was of a foreign manufacture and could not receive the proper licensing permit for charter use. Applicant contended that consequently, the yacht was placed on the market for sale. On March 15, 1973, the yacht (again berthed in Florida) was sold to A.N. Cahall of New Orleans, Louisiana, for \$70,000.00.

4. Applicant submitted invoices indicating that from the date of purchase through June 5, 1972, the yacht was berthed and used in Florida. During the period at issue here, applicant contended that the yacht entered New York waters twice, one time for repairs and again to show it to a prospective buyer.

5. Applicant did not submit any documentary evidence respecting its use of the yacht in New York waters.

A. That applicant, Innoco, Inc., failed to sustain the burden of proof necessary to show that its purchase of the yacht and subsequent usage in New York State was for resale, pursuant to the meaning and intent of section 1101(b) (4) (i) (A) of the Tax Law; therefore, applicant was liable for the compensating use tax on usage of the yacht within New York State, pursuant to section 1110 of the Tax Law.

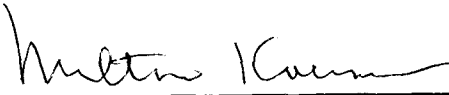
B. That the application of Innoco, Inc. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued December 24, 1975 is sustained.

DATED: Albany, New York

March 15, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

SALES TAX

AU-316.11 (4/78) State of New York - Department of Taxation & Finance - Audit Division - Sales Tax

INTERNATIONAL BUSINESS MACHINES

BUSINESS
CORP.
SEQ. NO.

APPROVAL OF CREDITS

~~AND REFUND REQUEST~~☐ DELETEADJUSTED/
CORRECTED:☐ OLD☐ NEW

IDENTIFICATION NO.

N Y 7 2 2 8 2 7 1 C

OR ☐ "NONFILERREF" -

SCREEN 18, SECT. XII

NAME AND ADDRESS OF VENDOR

International Business Machine Corporation
133 Westchester Avenue
White Plains, NY 10604

DATE OF CLAIM

12-19-72

☒ Interest☐ No Interest

DATE OF REFUND

TOTAL AMT. OF CHECK

PERIOD ENDED	PERIOD DESIGNATOR	OVERPAYMENT (+) OR UNDERPAYMENT (-)	INTEREST FROM	INTEREST (+) (-)	DISTRIBUTION	
					LOCATION CODE	\$ AMOUNT OF TAX
1 8/31/69	170	11,313.77	9-20-69	-		
2 11/30/69	270	13,970.86	12-20-69	-		
3 2/28/70	370	16,587.68	3-20-70	-		
4 5/31/70	470	13,927.83	6-20-70	-		
5 11/30/70	271	14,086.03	12-20-70	-		
6 2/28/71	371	41,437.41	3-20-71	-		
7 5/31/71	471	10,485.17	6-20-71	-		
8 8/31/71	172	13,420.28	9-20-71	-		
9 11/30/71	272	19,077.04	12-20-71	-		
10 2/28/72	372	2,438.42	3-20-72	-		
11 5/31/72	472	29,551.80	6-20-72	-		
12				-		
13				-		
14				-		
15 TOTALS		186,296.29				OK -

EXPLANATION OF REFUND

OK -

Credit is granted of the tax paid on the purchase of parts used in research and

development, and parts with a life of one year or more that are used in manufacturing.

Credit is made, with interest, pursuant to Sections 1115(a)(10), 1115(a)(12) and 1139(a)

of the Tax Law.

APPROVAL

PREPARED BY

DATE

APPROVED BY

DATE

PRINCIPAL OR ASSOC. SALES TAX EXAMINER

DATE

SALES TAX AUDIT SUPERVISOR

DATE

DIRECTOR OR ASSISTANT DIRECTOR

DATE

COMMISSIONER

DATE

COMMISSIONER

DATE

COMMISSIONER

DATE

15/ Jones H. Tulley

15/ Milton Koerner

15/ Thomas H. Lynch

1/6/79

11/30/78

11/28/78