

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
George R. Egloff, Jr. :  
and James E. Egloff : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law :  
for the Period 6/25/74. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of July, 1980, he served the within notice of Determination by mail upon George R. Egloff, Jr., and James E. Egloff, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George R. Egloff, Jr.  
and James E. Egloff  
1539 Genesee St.  
Buffalo, NY 14211

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

Sworn to before me this  
14th day of July, 1980.

Dorothy A. Bank

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
George R. Egloff, Jr. :  
and James E. Egloff : AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of :  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law :  
for the Period 6/25/74. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of July, 1980, he served the within notice of Determination by mail upon Thomas L. David the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Thomas L. David  
2600 Main Pl. Tower  
Buffalo, NY 14202

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  
14th day of July, 1980.

Estroah A. Bank

J. Vredenburg

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

July 14, 1980

George R. Egloff, Jr.  
and James E. Egloff  
1539 Genesee St.  
Buffalo, NY 14211

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) 1139 & 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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Thomas L. David  
2600 Main Pl. Tower  
Buffalo, NY 14202  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
	:	
of	:	
	:	
GEORGE R. EGLOFF, JR. and JAMES E. EGLOFF	:	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 25, 1974.	:	

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Applicants, George R. Egloff, Jr. and James E. Egloff, 1539 Genesee Street, Buffalo, New York 14211, 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 25, 1974 (File No. 16834).

A formal hearing was held before Alan R. Golkin, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on May 18, 1978 at 10:45 A.M. Applicants appeared by Thomas L. David, Esq. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether applicants are entitled to a refund of sales taxes paid on the purchase of a boat.

FINDINGS OF FACT

1. On or about June 25, 1974, applicants, George R. Egloff, Jr. and James E. Egloff, purchased a boat made in Rhode Island. They paid 7 percent New York State and local sales tax of \$1,304.38 on the boat. The boat was delivered in the water at Youngstown, New York.

2. Applicants intended to and did sail and store the boat in Ontario, Canada, on Lake Erie.

3. Applicants accepted delivery of the boat in Youngstown, New York, in "sail away" condition, i.e., "fully rigged and in commission". The only work done on the boat in New York was some painting, printing of the name on the boat, storing of certain personal property and installation of a few optional items such as an auxiliary battery and sail winches and the hanging of the sails.

4. Applicants did not purchase the boat for resale. They shipped the boat outside New York State for use outside New York State.

5. Applicants have claimed a refund of the \$1,304.38 paid in sales and use taxes, relying on section 1119(a)(4) of the Tax Law.

#### CONCLUSIONS OF LAW

A. That at the time of the purchase of the boat, section 1119(a) of the Tax Law provided, in pertinent part:

"(a) Subject to the conditions and limitations provided for herein, a refund or credit shall be allowed for a tax paid pursuant to subdivision (a) of section eleven hundred five or section eleven hundred ten... (4) on the sale or use within this state of tangible personal property, not purchased for resale, if the use of such property in this state is restricted to fabricating such property (including incorporating it into or assembling it with other tangible personal property), processing, printing or imprinting such property and such property is then shipped to a point outside this state for use outside this state..."

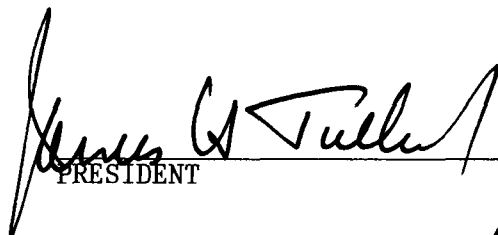
This section was enacted to "eliminate the incentive...to have fabrication, processing and printing done outside New York State where the completed product is to be used outside..." New York State. (Memorandum of Department of Taxation and Finance, New York Legislative Annual-1967, p. 220.) Applicants' use of the boat in New York State did not constitute fabricating, processing, printing or imprinting within the meaning of section 1119(a)(4) of the Tax Law. Accordingly, applicants are not entitled to a refund.


B. That the application of George R. Egloff, Jr. and James E. Egloff for refund of sales and use taxes is denied.

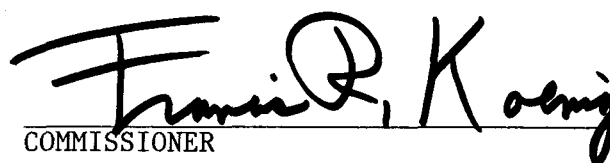
DATED: Albany, New York

JUL 14 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER