

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Chemical Bank

: 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:  
9/1/72-2/29/76.

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 29th day of January, 1982, he served the within notice of Decision by certified mail upon Chemical Bank, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

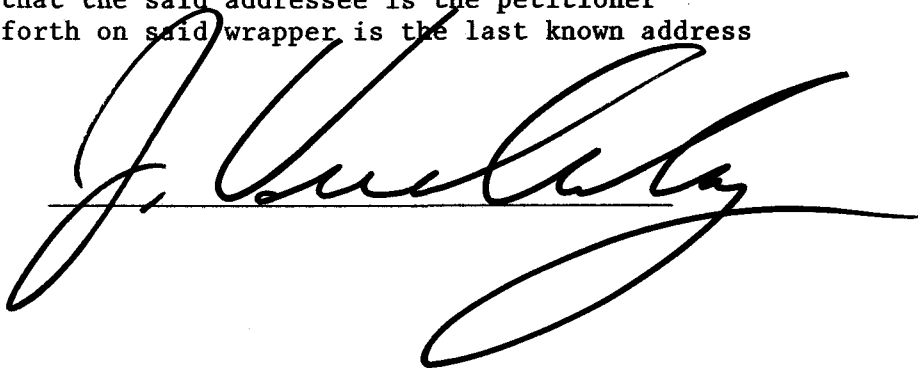
Chemical Bank  
55 Water St.  
New York, NY 10041

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  
29th day of January, 1982.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of  
Chemical Bank

:  
:  
: 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 9/1/72 - 2/29/76.

State of New York  
County of Albany

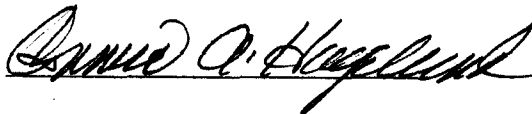
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of January, 1982, he served the within notice of Decision by certified mail upon Richard J. Hiegel the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

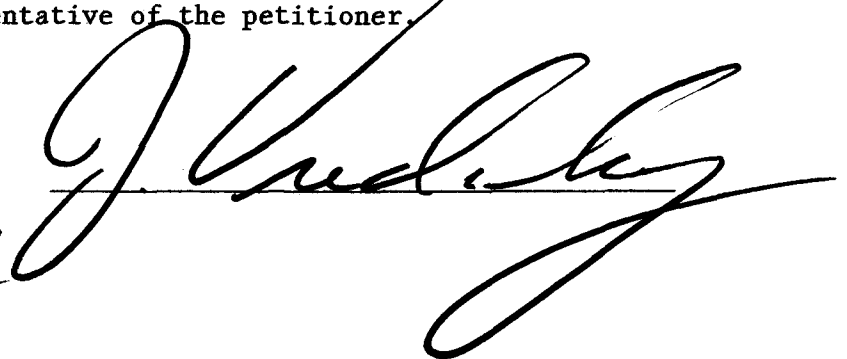
Richard J. Hiegel  
Cravath, Swaine & Moore  
One Chase Manhattan Plaza  
New York, NY 10005

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  
29th day of January, 1982.





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

January 29, 1982

Chemical Bank  
55 Water St.  
New York, NY 10041

Gentlemen:

Please take notice of the Decision 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:

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  
Richard J. Hiegel  
Cravath, Swaine & Moore  
One Chase Manhattan Plaza  
New York, NY 10005  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition  
of  
CHEMICAL BANK  
for Revision of a Determination or  
for Refund of Sales and Use Tax under  
Articles 28 and 29 of the Tax Law for  
the Period September 1, 1972 through  
February 29, 1976.

---

DECISION

Petitioner, Chemical Bank, 55 Water Street, New York, New York 10041, filed a petition for revision of a determination or for refund of sales and use tax under Articles 28 and 29 of the Tax Law for the period September 1, 1972 through February 29, 1976 (File No. 19596).

A formal hearing was held before Gasper S. Fasullo, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 21, 1980 at 1:15 P.M. Petitioner appeared by Cravath, Swaine & Moore, Esqs. (Richard J. Hiegel, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether New York Sales Tax is payable with respect to fees paid by petitioner, Chemical Bank, to food service management companies as compensation for operating cafeterias and dining rooms for the Bank's employees and also for reimbursements by said Bank for certain costs incurred by such companies in rendering such services.

FINDINGS OF FACT

1. On April 26, 1977, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the petitioner,

Chemical Bank, in the amount of \$1,576,580.00, plus penalty and interest in the sum of \$791,876.86, for a total due of \$2,368,456.86 for the period September 1, 1972 through February 29, 1976. The amount aforesaid represents taxes due on indirect or third party leases which were owned by the petitioner, capital asset purchases, and payments to food service management companies.

2. On July 21, 1977, petitioner filed its petition for revision of a determination or for refund of tax paid with respect to the aforesaid assessment.

3. On February 9, 1979, petitioner withdrew its said petition dated July 21, 1977 and consented to a discontinuance of the case initiated by the filing of said petition, "except with respect to the so-called cafeteria subsidy issue represented by the 'Disagreed Tax' of \$304,915.31...as to which issue the case shall proceed to a hearing...".

4. On August 6, 1979, the petitioner duly filed its perfected petition for a review of a determination of tax due under Articles 28 and 29 of the Tax Law, in the aforesaid sum of \$304,915.31 for the period in issue.

5. The Audit Division contends that under section 1105(d)(i) of the Tax Law receipts by the food service management companies from petitioner are taxable.

6. During the period September 1, 1972 through February 29, 1976, petitioner was engaged in the commercial banking business with offices located in New York City.

7. During the period in issue, the petitioner maintained a number of cafeterias and dining rooms, on premises owned or leased by petitioner, for the exclusive use of its employees. Although said employees were required to pay for meals, they were charged less than they would normally be required to pay at public eating places. New York State and City sales tax was collected

from petitioner's employees for meals purchased in petitioner's cafeterias and dining rooms.

8. During the period in issue, petitioner retained several food service management companies to operate said cafeterias and dining rooms on a contractual basis. These companies provided the personnel to prepare the food and serve it, as well as the cleaning personnel to work in the cafeterias and dining rooms. Although the food service management companies purchased the food and drink consumed in the petitioner's cafeterias and dining rooms, such purchases were made on behalf of the petitioner and owned by the petitioner.

9. In addition to providing the premises where the cafeterias and dining rooms were located, the petitioner furnished all the kitchen equipment and utensils, selected the menus, determined the hours of operation, quality of food to be served and prices to be charged.

10. In return for their services, petitioner paid the food service management companies 6 percent of the dollar amount of sales made to petitioner's employees as and for their management fee, and reimbursed the companies for their direct operating costs (cost of food and drink purchased, salaries of the companies' employees, other labor costs, cleaning supplies, linens, insurance, etc.) to the extent that these costs exceeded income from sales. These management fees and reimbursements were billed to the petitioner on a monthly basis.

11. Sales tax was not collected with respect to the fees and cost reimbursements paid by petitioner to the food service management companies.

#### CONCLUSIONS OF LAW

A. That section 1105(d)(i) of the Tax Law provides that there shall be a tax paid upon "(t)he receipts from every...sale of food and drink of any

nature or of food alone, when sold in or by restaurants, taverns or other establishments in this state, or by caterers, including in the amount of such receipts any cover, minimum, entertainment or other charge made to patrons or customers".

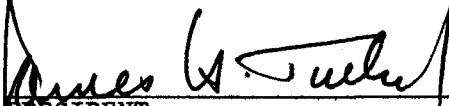
B. That the amounts received by the food service management companies from the petitioner under the reimbursed costs subsidy and management fee arrangements are sales of food and drink within the meaning and intent of the statute, and thus taxable. Stouffer Management Food Service, Inc. v. Tully, Jr., Supreme Court, Special Term, New York County, 415 N.Y.S.2d 559 (1978), aff'd mem. 414 N.Y.S.2d 948 (App. Div. 1st Dept. 1979).

C. That the petition of Chemical Bank is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 26, 1977, but in the reduced amount of \$304,915.31 as set forth in the Withdrawal of Petition and Discontinuance of Case dated February 9, 1979, is sustained.

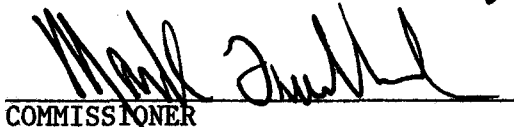
DATED: Albany, New York

JAN 29 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER