

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

June 17, 1983

Liberty National Bank & Trust Co.
424 Main St.
Buffalo, NY 14202

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 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 Law 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
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Jerome D. Adner
Jaekle, Fleischman & Mugal
700 Liberty Bank Bldg.
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Liberty National Bank & Trust Co. :
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 6/1/75-5/31/78. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

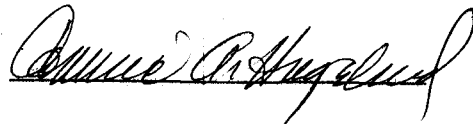
David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of June, 1983, he served the within notice of Decision by certified mail upon Liberty National Bank & Trust Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Liberty National Bank & Trust Co.
424 Main St.
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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
17th day of June, 1983.



David Parchuck
Kathy Pfaffenbach

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Liberty National Bank & Trust Co. :
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 6/1/75-5/31/78. :
:

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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 17th day of June, 1983, he served the within notice of Decision by certified mail upon Jerome D. Adner the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jerome D. Adner
Jaekle, Fleischman & Mugal
700 Liberty Bank Bldg.
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
17th day of June, 1983.

Amie P. Hayman

David Parchuck
Kathy Pfaffenbach

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LIBERTY NATIONAL BANK AND TRUST COMPANY	:	DECISION
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 May 31, 1978.	:	

Petitioner, Liberty National Bank and Trust Company, 424 Main Street, Buffalo, New York 14202, filed a petition 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 May 31, 1978 (File No. 27557).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on April 21, 1982 at 9:15 A.M. with all briefs to be submitted by August 1, 1982. Petitioner appeared by Jaeckle, Fleischmann & Mugel (Jerome D. Adner and Philip Clarkson, Esqs., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether the proceeds received from petitioner's issuance of checks to "ThriftyCheck" customers constitute receipts from the sale of tangible personal property subject to tax under section 1105(a) of the Tax Law.

FINDINGS OF FACT

1. On June 15, 1979, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Liberty National Bank and Trust Company. The Notice asserted

tax due of \$58,229.22, plus simple interest of \$12,714.13, for the period June 1, 1975 through May 31, 1978. Petitioner timely filed a protest thereto.

2. On audit of the books and records of petitioner, the Audit Division determined that the proceeds received from the issuance of "ThriftiChecks" represented receipts from the sale of tangible personal property. The petitioner had considered the proceeds to be prepaid service charges exempt from sales tax.

3. The petitioner contends that a service charge assessed by a bank to recapture the costs of providing customer checking services has and may take on any one of several different forms. Its expert witness testified on the progression of service charges starting with the flat service charge introduced in the 1920's, up to the application of service charges to today's special checking accounts. His testimony, support for which is contained in Principles Of Banking Operation, by the American Institute of Banking, was that:

"The service charges on special checking accounts are usually collected by one of two methods, either by charging the accounts the fee at the time each check was made or by selling the customer a book of blank checks made up especially for this type of account."

4. During the period under review, the petitioner offered its customers a special checking account known as a "ThriftiCheck" account. The petitioner collected three dollars upon delivery of a book of twenty checks to a "Thrifti-Check" customer.

5. The Rules and Regulations for "ThriftiCheck" accounts at the Liberty National Bank and Trust Company provided, in part:

"5. The special form of ThriftiCheck purchased from this Bank with the depositor's name(s) and account number imprinted thereon must be used to withdraw funds from a ThriftiCheck Account. If any other form of check is used, this Bank reserves the right to pay or return such check, and if paid, a service charge will be made to depositor's account for each check so processed. No refunds will be made on lost, destroyed or unused ThriftiChecks. If a depositor spoils any checks, they may be returned for adjustment credit to account when submitted with a reorder for checks."

6. An internal memorandum of petitioner's dated January 23, 1979 from a C. Gaglio to a B. L. Kieffer provided, in part:

"1. When a customer closes his Thrifticheck (sic) account there is no automatic refund for unused checks since most Thrifticheck (sic) accounts are closed through clearings, with a check drawing the balance to zero. We do not know if the account is actually closed since no minimum balance is required. For this reason, we maintain zero balance accounts on our files for six (6) months. We also have no way of knowing how many checks the customer has left.

If the customer comes into a branch to close his account and presents his unused checks, a refund is processed to his account.

2. When transferring the account to another type service charge account, branch offices process a credit to the new account for all unused checks."

7. It was petitioner's testimony that although the aforementioned was prepared after the period of time in question, the policy stated therein would have been effective for the period June 1, 1975 through May 31, 1978, and that refunds had, in fact, been made upon requests from customers who may have closed accounts, in the amount of 10 cents per unused check.

8. Petitioner's costs to process a check belonging to a special account comes to approximately 17 cents, based on today's standard cost for processing an average checking account check. Of said costs, the cost of the check itself is 3 cents.

9. Petitioner, in purchasing "ThriftiChecks", paid sales tax on the checks' cost to the printer.

10. Petitioner does not dispute the taxable status of the sale of imprinted personalized checks. Said checks are of the type that contain a printed address or a scene or drawing and were not available during the period in question to customers with "ThriftiCheck" accounts.

11. Petitioner at all times acted in good faith.

CONCLUSIONS OF LAW

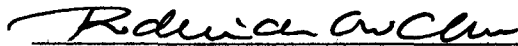
A. That section 1105(a) of the Tax Law imposes a sales tax upon the receipts from every retail sale of tangible personal property. That petitioner's proceeds from the issuance of "ThriftiCheck" checks to its customers does not constitute a sale of tangible personal property under section 1105(a) of the Tax Law, but constitutes prepaid service charges exempt from sales and use taxes.

B. That the petition of Liberty National Bank and Trust Company is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 15, 1979 is hereby cancelled in full.

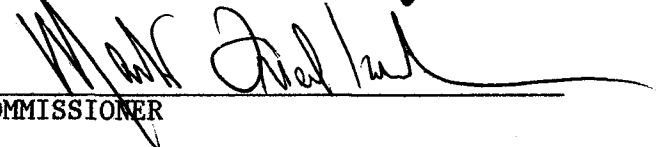
DATED: Albany, New York

STATE TAX COMMISSION

JUN 17 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

P 481 207 600

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Exim National Bank</i>	
Street and No. <i>21100</i>	
P.O., State and ZIP Code <i>424 Main St</i>	
Postage <i>Buffalo NY 14202</i>	
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 481 207 601

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>James D. Adm</i>	
Street and No. <i>Joseph H. Schuman Mngl.</i>	
P.O., State and ZIP Code <i>1100 N. Main St Bldg</i>	
Postage <i>Buffalo NY 14202</i>	
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982