

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EAGLE VENDING CORP.

AFFIDAVIT OF MAILING

~~For a Refund of Tax on the Determination of a Deficiency or~~
~~Revision of a Determination or Refund~~
For a Hearing
under Article (x) 20 of the
Tax Law ~~for the Year(s) or Period(s) to~~
Review the Seizure of Cigarette Vending
Machines on November 25, 1975.
State of New York
County of Albany

Marsina Donnini, 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 21st day of June, 1977, she served the within
Notice of Determination by ~~(certified)~~ mail upon Eagle Vending Corp.

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

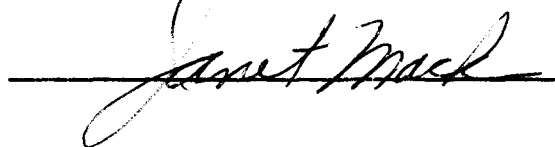
Eagle Vending Corp.
6309 Mill Lane
Brooklyn, New York

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

21st day of June, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EAGLE VENDING CORP.

AFFIDAVIT OF MAILING

~~For a Redetermination of a Deficiency or~~
~~a Revision of a Determination or a Refund~~
For a Hearing
under Article (x) 20 of the
Tax Law for the Year(s) or Period(s) to
Review the Seizure of Cigarette Vending
Machines on November 25, 1975.
State of New York
County of Albany

Marsina Donnini, 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 21st day of June, 1977, she served the within
Notice of Determination by ~~(certified)~~ mail upon Ronald S. Koppelman

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

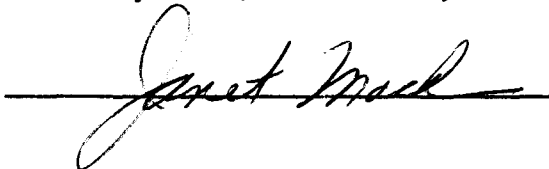
Ronald S. Koppelman, Esq.
Haskell, Blatt, Koppelman & Evans
188 Montague Street
Brooklyn, New York 11201

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

21st day of June, 1977.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

June 21, 1977

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

✓
Eagle Vending Corp.
6309 Mill Lane
Brooklyn, New York

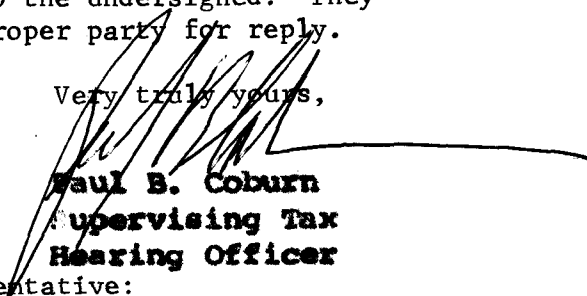
Gentlemen:

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

Please take further notice that pursuant to
Section(8) **478** 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,


Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
EAGLE VENDING CORP.	:	DETERMINATION
for a Hearing under Article 20 of the Tax Law	:	
to Review the Seizure of Cigarette Vending	:	
Machines on November 25, 1975.	:	

Eagle Vending Corp., 6309 Mill Lane, Brooklyn, New York, filed an application for a hearing to review the seizure of 53 cigarette vending machines under Article 20 of the Tax Law on November 25, 1975. (File No. 10560).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on December 7, 1976 at 12 noon. The applicant appeared by Haskell, Blatt, Koppelman & Evans (Ronald S. Koppelman, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether the Special Investigations Bureau properly discovered and seized certain packages of cigarettes bearing counterfeit stamps with the number "3112" affixed thereto, as well as the cigarette vending machines

owned, leased, operated or controlled by applicant Eagle Vending Corp.

II. Whether the applicant, Eagle Vending Corp., is entitled to redeem the seized cigarette vending machines.

FINDINGS OF FACT

1. The applicant, Eagle Vending Corp., is a domestic corporation organized under the laws of the State of New York on May 29, 1963, and is engaged in the business of operating vending machines and selling cigarettes at retail through same. The corporation maintains its principal place of business at 6309 Mill Lane, Brooklyn, New York.

2. Prior to November 25, 1975, the Police Department of the City of New York, seized cigarettes at a location in the Bronx, bearing counterfeit cigarette tax stamps with number "3112". An investigation was conducted by the Cigarette Enforcement Section of the Miscellaneous Tax Bureau, to determine whether cigarettes bearing the counterfeit stamp number "3112", were contained in cigarette vending machines in various other locations.

3. On or about November 25, 1975, and prior thereto, the distributor of packages of cigarettes bearing the tax stamp number "3112" was Jamaica Tobacco Corp. The number "3112" was assigned to said distributor by the Miscellaneous Tax Bureau.

4. The applicant, Eagle Vending Corp., purchased cigarettes from Jamaica Tobacco Corp.

5. On or about November 25, 1975, the special cigarette enforcement investigators, who are peace officers, conducted an investigation to determine whether cigarettes bearing the counterfeit number "3112" were contained in cigarette vending machines. They located a cigarette vending machine owned or leased by the applicant, Eagle Vending Corp., which they believed contained packages of cigarettes with the counterfeit number "3112" stamp thereon.

6. On November 25, 1975, the special investigators went to the office of Eagle Vending Corp. at 6309 Mill Avenue, Brooklyn, New York, to inspect the stock of cigarettes. There they found other cigarettes bearing the number "3112" which they believed to be counterfeit. The special investigators then requested an employee of the applicant to accompany them to various locations where the applicant maintained cigarette vending machines. An inspection was made at each of the sites where the cigarette vending machines were located. The investigators determined that each cigarette vending machine contained at least one package of cigarettes bearing the counterfeit number "3112". They thereupon sealed and seized the 53 machines owned or leased by Eagle Vending Corp. and brought them to Two World Trade Center, New York, New York, where they were placed in a storage room under lock and key.

7. Thereafter, all the packages of cigarettes bearing the number "3112" were removed from the machines. Five thousand four hundred fifty packs or 545 cartons were confiscated, but 8,198 packs were returned to the applicant. The money in the machines was returned to the applicant.

8. Laboratory testing by Pitney-Bowes, the manufacturer of the stamping machines, confirmed the special investigators' belief that each cigarette vending machine seized contained one or more packages of cigarettes to which was affixed a counterfeit "3112" stamp.

9. On June 3, 1976, the Special Investigations Bureau issued a notice to the applicant, Eagle Vending Corp., advising it that the seized cigarettes and the 53 cigarette vending machines seized on November 25, 1975 were declared to be forfeited. On June 17, 1976, the attorney for the applicant protested the forfeiture of the machines and requested a hearing with respect thereto.

10. Subdivision (a) of section 477 of the Tax Law provides, in part, that:

"Whenever the tax commission or a police officer as designated in section 1.20 of the criminal procedure law shall discover any cigarettes, subject to tax provided by this article, and upon which the tax has not been paid or the stamps affixed as herein required, they are hereby authorized and empowered forthwith to seize and take possession of such cigarettes, together with any vending machine or receptacle in which they are held for sale. Such cigarettes, vending machine or receptacle seized by a police officer shall be turned over to the tax commission. Such seized cigarettes, vending machine or receptacle, shall be forfeited to the state.* * *"

11. Section 477(b) of the Tax Law permits, in the alternative, the redemption of the seized vending machines by the payment of the tax due, together with the penalty of fifty per centum thereof.

CONCLUSIONS OF LAW

A. That on November 25, 1975, the Special Investigations Bureau discovered cigarettes with counterfeit stamps bearing the number "3112" in cigarette vending machines owned or leased, operated and controlled by Eagle Vending Corp.; and therefore, properly seized and took possession of said cigarettes and the 53 vending machines in which they were held for sale within the intent and meaning of subdivision (a) of section 477, Article 20 of the Tax Law.

B. That the 5,450 packages of cigarettes bearing the counterfeit number "3112" are hereby declared to be forfeited to the State.

C. That the applicant, Eagle Vending Corp., may redeem the cigarette vending machines by the payment of the tax due, together with a penalty of fifty percentum thereof, to wit, \$1.50 per carton plus fifty percent thereof or the amount of \$1,226.25.

D. That the application of Eagle Vending Corp., except as indicated above, be and the same is hereby denied.

DATED: Albany, New York
June 21, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER