

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

S & E VENDING, INC.

AFFIDAVIT OF MAILING

~~Tax~~ ~~Redetermination~~ ~~of~~ ~~Deficiency~~ ~~or~~
~~Revision of a Determination or a Refund~~
for a License as a Wholesale
Dealer of Cigarettes
under Article 20 of the
Tax Law ~~for the year(s)~~ ~~or~~ ~~Period(s)~~

State of New York
County of Albany

Bruce Batchelor, 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 April, 19 77, he served the within
Notice of Determination by (certified) mail upon S & E Vending, Inc.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: S & E Vending, Inc.
170 Nassau Drive
Albertson, New York 11507

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 April, 1977.

Bruce Batchelor

Just Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

S & E VENDING, INC.

AFFIDAVIT OF MAILING

~~For a License as a Wholesale Dealer of Cigarettes~~
~~under Article 20 of the Tax Law for the year(s) 1977~~
~~for the year(s) 1977~~

State of New York
County of Albany

Bruce Batchelor, 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 April, 1977, he served the within
Notice of Determination by ~~(certified)~~ mail upon Richard Leshnower &
Richard Rubin (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Richard Leshnower & Richard Rubin, Esqs.
c/o Milton E. Jacobowitz, Esq.
1618 Central Avenue
Far Rockaway, New York 11690
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 April, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

April 14, 1977

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

S & E Vending, Inc.
170 Nassau Drive
Albertson, New York 11507

Gentlemen:

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

Please take further notice that pursuant to
Section(4) **475** 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 TAX COMMISSION

In the Matter of the Application :
of :
S & E VENDING, INC. : DETERMINATION
for a License as a Wholesale Dealer of :
Cigarettes under Article 20 of the Tax :
Law. :

Applicant, S & E Vending, Inc., hereinafter "S & E", 170 Nassau Drive, Albertson, New York 11507, filed an application for a license as a wholesale dealer of cigarettes pursuant to Article 20 of the Tax Law (File No. 10954).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 10, 1977 at 2:45 P.M.. Applicant appeared by Milton E. Jacobowitz, Esq. (Richard Leshnower, Esq. and Richard Rubin, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether the denial of a license to S & E Vending, Inc., as a wholesale dealer of cigarettes pursuant to Article 20 of the Tax Law was proper.

FINDINGS OF FACT

1. On December 31, 1975, applicant, S & E, filed an application with the Miscellaneous Tax Bureau for a license as a wholesale dealer of cigarettes.

2. On January 19, 1976, the Miscellaneous Tax Bureau denied S & E's application for a license as a wholesale dealer of cigarettes.

3. On January 28, 1976, applicant, S & E, filed a written request for a hearing on the denial of its application.

4. Applicant, S & E, is located at 170 Nassau Drive, Albertson, New York 11507. Applicant operated out of the residence of Sam Domenico and Elizabeth Domenico, his wife, who are respectively the president and secretary of the corporation. Beginning with its incorporation in New York State on August 7, 1974, the applicant supplied cigarettes to 28 vending machines at various locations in New York City.

5. Applicant, S & E, had applied for and received a license to operate cigarette vending machines in New York City from the New York City Finance Administration for the period May 1975 through January 31, 1976.

6. On November 13, 1975, a special investigator for the Miscellaneous Tax Bureau visited a luncheonette in Brooklyn, New York, where he examined a cigarette vending machine which bore a sticker indicating the machine was owned and serviced by applicant, S & E. He observed some cigarette packages that

appeared to lack State tax stamps. After telephone contact with applicant, the investigator spoke with one Sam Domenico, Jr. at the luncheonette premises. The son of the president of applicant, S & E, opened the machine. Seven packs of cigarettes lacking tax stamps were found in the machine. Sam Domenico, Jr. was arrested and charged with a violation of Article 20, section 481.2 of the Tax Law. A desk summons was issued. The vending machine and the cigarettes in it were impounded.

7. On December 29, 1976, at a pre-arranged time and place in Queens County, the same Miscellaneous Tax Bureau investigator met and spoke with Sam Domenico, Sr., the corporate president of applicant, S & E. There was discussion of the arrest of Sam Domenico, Jr. and what the investigator could or would do about it. Another meeting was arranged.

8. On December 30, 1976, the investigator and Sam Domenico, Sr. met by pre-arrangement at a diner in Queens County. Their accounts differ as to the contents of the conversation, but the two men agree that Sam Domenico, Sr. proffered, and the investigator accepted, the sum of \$100.00 in cash. The investigator thereupon arrested Sam Domenico, Sr. and charged him with the crime of bribery.

9. The Jamaica Tobacco & Sales Corp., a wholesale distributor, sold applicant, S & E, all its cigarettes. Jamaica Tobacco & Sales Corp. stated that through faulty operation of the tax stamping machine or the inadvertent oversight of its employees, some

packs of cigarettes may have failed to have been properly stamped. The company allegedly had had this problem with several of its customers.

10. On January 20, 1976, in the Criminal Court of the City of New York, County of Kings, the charges against Sam Domenico, Jr. were dismissed.

11. Sam Domenico, Jr. was not an officer of the applicant S & E.

12. Applicant, S & E, had made no application for a New York State License as a Wholesale Dealer of Cigarettes prior to December 31, 1975.

CONCLUSIONS OF LAW

A. That the Tax Law is clear and unequivocal that "...no person shall be a wholesale dealer unless he has been granted and publicly displays in his place of business a license from the department of taxation and finance," in accordance with Section 480 of the Tax Law.

B. That a "wholesale dealer" is defined by section 470(6) of the Tax Law, inter alia, as "...any person who owns, operates or maintains one or more cigarette vending machines in, at or upon premises owned or occupied by any other person."

C. That "person" includes a corporation, in accordance with section 470(2) of the Tax Law.

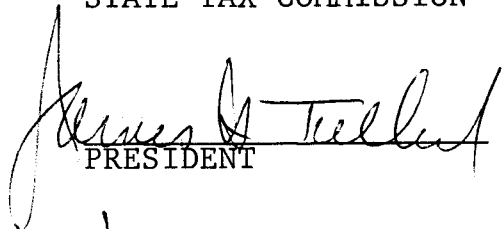
D. That the Tax Commission may for cause refuse to issue, or may suspend or revoke a wholesaler's license. A violation of any provision of Article 20 shall be cause to refuse a license in accordance with section 480 of the Tax Law.

E. That the State Tax Commission had before it evidence that the applicant, S & E, had been operating cigarette vending machines prior to the December 31, 1975 application, and therefore had legal cause to refuse to grant the wholesale dealer's license sought.

F. That the denial of a license to S & E Vending, Inc., as a wholesale dealer of cigarettes under Article 20 of the Tax Law by the Miscellaneous Tax Bureau is sustained.

DATED: Albany, New York
April 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER