

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
BIG V VENDING CORP. and VICTOR DE CERBO : AFFIDAVIT OF MAILING  
d/b/a V & R ENTERPRISES  
For a ~~Redetermination of a Refund~~ :  
~~xxRevision of a Refund of a License as a Wholesale Dealer of Cigarettes~~  
~~xxHearing to Review the Denial or Revocation~~  
~~xxTax under Article (x) 20 of the~~  
Tax Law ~~for the Year(s) of Period(s)~~ :

State of New York  
County of Albany

John Huhn , 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 15th day of March , 19 79, she served the within  
Notice of Decision by (~~certified~~) mail upon Big V 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: Big V Vending Corp.  
265 West Main Street  
Patchogue, New York 11772

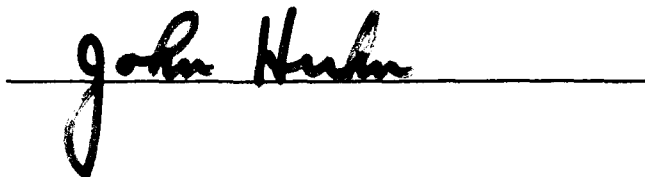
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

15th day of March , 1979.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
BIG V VENDING CORP. and VICTOR DE CERBO : AFFIDAVIT OF MAILING  
d/b/a V & R ENTERPRISES  
For a ~~Determination of a Deficiency or~~ :  
~~Revision of a Determination or a Refund~~  
of Hearing to Review the Denial or Revocation  
of a License as a Wholesale Dealer of Cigarettes  
under Article (s) 20 of the  
Tax Law ~~for the year(s) or period(s)~~ :

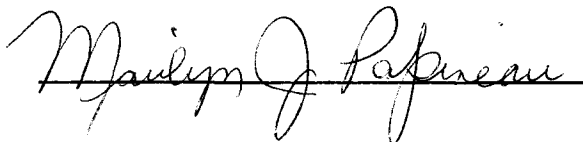
State of New York  
County of Albany

John Huhn , 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 15th day of March , 19 79, she served the within  
Notice of Decision by (~~certified~~) mail upon Victor DeCerbo  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Victor DeCerbo  
839 West Greenbelt Parkway  
Holbrook, 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

15th day of March , 19 79

  
Marilyn J. Papineau

  
John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
BIG V VENDING CORP. and VICTOR DE CERBO : AFFIDAVIT OF MAILING  
d/b/a V & R ENTERPRISES  
For a ~~Redetermination of a Deficiency~~ :  
~~xxRevision of a Deficiency~~ :  
~~or~~ Hearing to Review the Denial or Revocation  
of a License as a Wholesale Dealer of Cigarettes  
Taxes under Article (a) 20 of the  
Tax Law ~~for the Year(s) or Period(s)~~ :

State of New York  
County of Albany

John Huhn , 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 15th day of March , 19 79, she served the within  
Notice of Decision by (~~certified~~) mail upon Floyd Sarisohn  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Floyd Sarisohn, Esq.  
Sarisohn, Sarisohn, Carner, Thierman & Steindler  
1020 East Jericho Turnpike  
P.O. Box 280  
Commack, New York 11725  
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

15th day of March , 1979.

Marilyn J. Papaneau

John Huhn



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

March 15, 1979

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**Big V Vending Corp.**  
**265 West Main Street**  
**Patchogue, New York 11772**

**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) **478** 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**MICHAEL ALEXANDER**  
**SUPERVISING TAX HEARING OFFICER**

cc: Petitioner's Representative

Taxing Bureau's Representative



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

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

March 15, 1979

Mr. Victor DeCarbo  
839 West Greenbelt Parkway  
Holbrook, New York

Dear Mr. DeCarbo:

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) **478** 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

MICHAEL ALEXANDER  
SUPERVISING TAX HEARING OFFICER

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
BIG V VENDING CORP.	:	
and	:	
VICTOR DE CERBO	:	DECISION
d/b/a	:	
V & R ENTERPRISES	:	
for a Hearing to Review the Denial or	:	
Revocation of a License as a Wholesale	:	
Dealer of Cigarettes under Article 20	:	
of the Tax Law.	:	
	:	

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Applicants, Big V Vending Corp., 265 West Main Street, Patchogue, New York 11772, and Victor DeCerbo, 839 West Greenbelt Parkway, Holbrook, New York, filed applications for a hearing to review the denial of the corporate application for a license as a wholesale cigarette dealer and the cancellation of the individual license as a wholesale cigarette dealer (File No. 14929).

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 June 20, 1977 at 1:15 P.M. Applicants appeared by Sarisohn, Sarisohn, Carner, Thierman & Steindler, Esqs. (Floyd Sarisohn, Esq., of counsel). The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether denial to a corporation of a license as a whole-sale cigarette dealer was proper, where based on the criminal record of the corporation's president and sole shareholder.

II. Whether the discovery of the existence of a prior criminal record of a licensee more than twelve years after his conviction is proper cause for the cancellation of his license as a wholesale dealer of cigarettes.

FINDINGS OF FACT

1. Applicant Big V Vending Corp. is a New York corporation organized in January of 1976 and wholly-owned by Victor DeCerbo. As president of the corporation, Victor DeCerbo filed an application for a license as a wholesale cigarette dealer on March 10, 1976.

2. The application was made on form MT-343, which was supplied by the Miscellaneous Tax Bureau. The form made no inquiry as to arrest or conviction records of applicant or its officers. The application was not required to be sworn.

3. By a letter dated April 19, 1976, the Miscellaneous Tax Bureau notified applicant Big V Vending Corp. that its application for a corporate license as a wholesale dealer of cigarettes had been disapproved. The letter indicated that the disapproval was based on Victor DeCerbo's criminal record.

4. The same letter dated April 19, 1976 stated:

"We have arranged to cancel wholesale cigarette license #C-2356v issued in your former business organization as an individual doing business as V & R Enterprises."

5. On May 19, 1976, an attorney representing applicants, Big V Vending Corp. and Victor DeCerbo d/b/a V & R Enterprises, requested a hearing on the disapproval of the application for a wholesale cigarette dealer's license and on the cancellation of License No. C-2356v.

6. Applicant Victor DeCerbo d/b/a V & R Enterprises began business on April 14, 1969 and on the same day filed an application for a license as a wholesale dealer of cigarettes. Registration License No. C-1813v was approved by the Miscellaneous Tax Bureau on May 27, 1969. This license was replaced on July 31, 1972 by License No. C-2356v, on Victor DeCerbo's application dated July 8, 1972.

7. A report of criminal information regarding Victor DeCerbo was supplied on April 2, 1976 by the Division of Criminal Justice Services to the Miscellaneous Tax Bureau. By stipulation of the attorneys for the respective parties at the formal hearing, the convictions shown on that report were made part of the record. The record shows numerous convictions of Victor DeCerbo from 1938 to 1954 on various charges ranging from vagrancy to burglary, grand larceny and armed robbery. In 1964, a final conviction appeared for book-making. Victor DeCerbo testified that he has not been arrested since December of 1964.



8. Applicant Victor DeCerbo testified, without contradiction by the Miscellaneous Tax Bureau, that he has not even been charged with any violation of any rules and regulations concerning the wholesaling of cigarettes under Article 20 of the Tax Law during the eight years he has held a license under the Miscellaneous Tax Bureau, commencing in May of 1969.

9. Cancellation of the license as a wholesale dealer of cigarettes for Victor DeCerbo was not due to any violation on his part of the Tax Law, but was a direct consequence of his change of business operation in 1976 from an individual to a corporate entity. Clearance of the names of corporate officers through the Division of Criminal Justice (not made in 1969 and 1972) then revealed his criminal record.

10. The denial of a license as a wholesale dealer of cigarettes to Big V Vending Corp. by the Miscellaneous Tax Bureau was based on the previous criminal record of its president and sole stockholder, Victor DeCerbo.

#### CONCLUSIONS OF LAW

A. That every person seeking to do business in New York State as a wholesale dealer of cigarettes must have a license granted by the State Tax Commission. Such a license may be denied only for cause. It may be suspended or revoked only for cause "...after an opportunity for hearing has been afforded." Section 480, Article 20 of the Tax Law.

B. That refusal to grant a license for cause must be based on good cause, i.e., grounds which may be properly considered under the statute, and it must be supported by evidence. (53 C.J.S. Licenses section 38; Hoster v. Holz, 171 N.Y.S. 2d 65, 3 N.Y. 2d 639, 148 N.E. 2d 287).

C. That a record of criminal convictions, the most recent of which is more than twelve years old, does not constitute evidence of present unfitness of an applicant to hold in corporate form a license that he has held without violation as an individual for eight years. The cause cited as a basis for the denial of a license to Big V Vending Corp. was neither reasonable nor supported by sufficient evidence. (Barton Trucking Corp. v. O'Connell, 197 N.Y.S. 2d 138, 7 N.Y. 2d 307 (1959)).

D. That there was no cause for the cancellation of License No. C-2356v of Victor DeCerbo, granted July 31, 1972, which by law continued in effect "...until revoked or suspended for cause or surrendered." Section 480, Article 20 of the Tax Law. The cancellation is voided and the license is restored until replaced by the license to be granted to applicant Big V Vending Corp. in accordance with this decision.

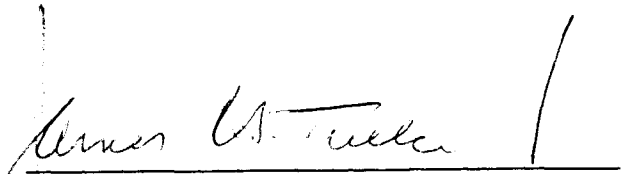
E. That the application of Big V Vending Corp. is granted and the denial of a license as a wholesale cigarette dealer is annulled.


The cancellation of the license as a wholesale dealer in cigarettes is voided, as indicated in Conclusions of Law "D", above, and the Miscellaneous Tax Bureau is hereby directed to process the application of Big V Vending Corp. in accordance with this decision.

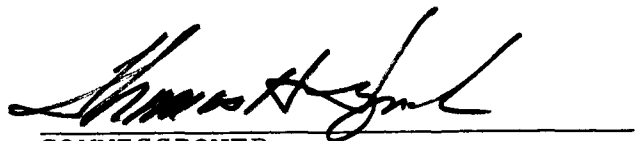
DATED: Albany, New York

STATE TAX COMMISSION

March 15, 1979

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER