

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Diane Scherillo :
d/b/a Central Vending Co. : AFFIDAVIT OF MAILING
:
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Cigarette Tax :
under Article 20 of the Tax Law for the Year 1981. :
:

State of New York
County of Albany

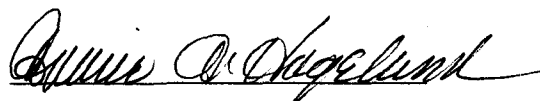
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Diane Scherillo, d/b/a Central Vending Co. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Diane Scherillo
d/b/a Central Vending Co.
500 Hempstead Tpke.
Elmont, NY 11003

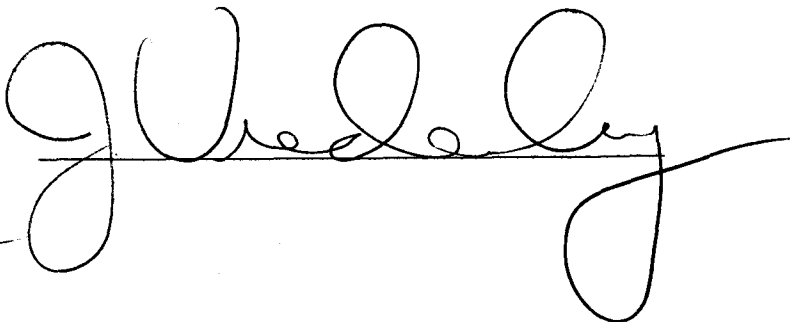
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
3rd day of December, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Diane Scherillo :
d/b/a Central Vending Co. : AFFIDAVIT OF MAILING
:
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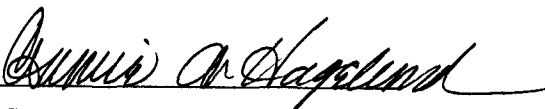
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Raymond F. Mineo the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

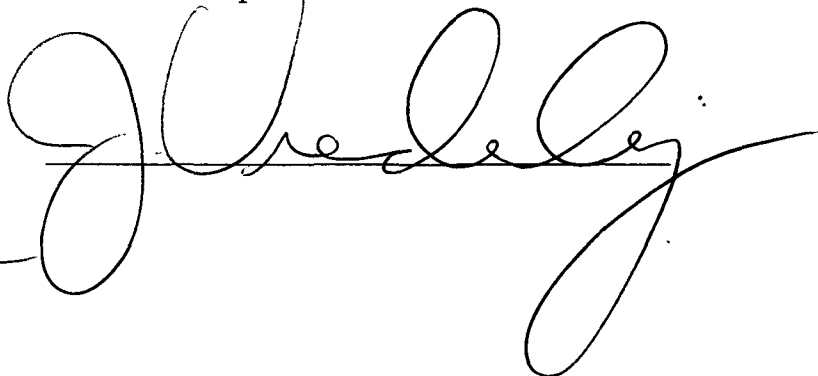
Raymond F. Mineo
Muscarella, Tomasone & Mineo
1040 Hempstead Tpke.
Franklin Square, NY 11010

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
3rd day of December, 1982.


AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

December 3, 1982

Diane Scherillo
d/b/a Central Vending Co.
500 Hempstead Tpke.
Elmont, NY 11003

Dear Ms. Scherillo:

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:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Raymond F. Mineo
Muscarella, Tomasone & Mineo
1040 Hempstead Tpke.
Franklin Square, NY 11010
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
DIANE SCHERILLO
d/b/a CENTRAL VENDING CO.
for a Hearing to Review a Denial of an
Application for a License as a Wholesale
Cigarette Dealer under Article 20 of the
Tax Law.

DECISION

Petitioner, Diane Scherillo, d/b/a Central Vending Co., 500 Hempstead Turnpike, Elmont, New York 11103, filed a petition for a hearing to review a denial of an application for a license as a wholesale cigarette dealer under Article 20 of the Tax Law (File 33534).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on January 18, 1982 at 1:35 P.M. Petitioner appeared by Muscarella, Tomasone & Mineo, Esqs., (Raymond F. Mineo, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq., (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether petitioner's application for a license as a wholesale cigarette dealer was properly denied.

FINDINGS OF FACT

1. The petitioner herein is Diane Scherillo and her husband is Ralph Scherillo.
2. Ralph Scherillo, exclusively, owned and operated a vending machine business under the name of Diane's Amusements. The machines Mr. Scherillo operated were such as pool tables, juke boxes, and video and pinball games.

3. Diane Scherillo, exclusively owns and operates a business known as Diane's Department Store a/k/a Diane's Superette. She had opened it as a clothing store but after 6 months changed it to a grocery store in which she is licensed to sell cigarettes, beer and other items. Her cigarette tax number for this business is No. 1124355678.

4. That on or about January 14, 1981 an undated Application for License as a Wholesale Dealer of Cigarettes (Form MT-343) was received from Diane Scherillo, d/b/a Central Vending Co., with the same address as Diane's Amusements. Central Vending Co. commenced business on December 18, 1980 and a business certificate was filed the same date with the Nassau County Clerk.

5. On May 15, 1981 the Special Investigations Bureau, Cigarette Tax Operations Section, advised Mrs. Scherillo by letter that her application had been denied for cause. The specific cause was not stated.

6. Mrs. Scherillo is the exclusive owner and operator of Central Vending Co.

7. Except as to her application, herein, Mrs. Scherillo has never been denied a license, nor has she had any license suspended or revoked.

CONCLUSIONS OF LAW

A. That in Matter of Granville Tobacco Co., Inc., State Tax Commission, November 23, 1976, it was held that the nonspecified cause cited by the Miscellaneous Tax Bureau for denial of license as wholesale cigarette dealer, pursuant to Tax Law section 480, was unreasonable and not sustained by sufficient evidence, where the Miscellaneous Tax Bureau did not inform the applicant of the cause of the denial.

B. That not only was petitioner not informed of the specific cause for denying her application, herein, but it appears the denial was unreasonable and

not sustained by sufficient evidence. Petitioner currently has a Retail Cigarette Vendors' License and a beer license and has a good record.

C. That the petition herein is granted and Diane Scherillo d/b/a Central Vending Co. is to be issued a License as a Wholesale Dealer of Cigarettes.

DATED: Albany, New York

DEC 03 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER