

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
LEON HOLTZER  
d/b/a EASTERN GENERAL VENDING COMPANY

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY ~~(CERTIFIED)~~ MAIL

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~XXXXX~~ Period August 1, 1965  
through January 6, 1966.

State of New York  
County of Albany

Janet Mack , 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 31st day of July , 1974 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Leon Holtzer,  
d/b/a Eastern General ~~(XXXXXXXXXXXX)~~ the petitioner in the within  
Vending Company  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Leon Holtzer

d/b/a Eastern General Vending Company  
86-70 Francis Lewis Boulevard  
Queens Village, New York 11427

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative~~  
~~xxx)~~ 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

31st day of July , 19 74

*James A. Van Patten*

*Janet Mack*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
LEON HOLTZER  
d/b/a

EASTERN GENERAL VENDING COMPANY :

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Sales & Use :  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~years~~ Period August 1, 1965  
through January 6, 1966.

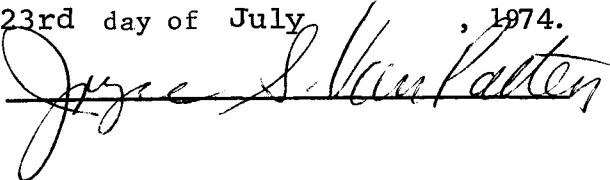
State of New York  
County of Albany

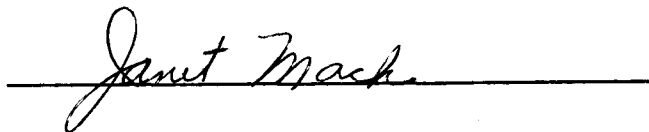
Janet Mack , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 23rd day of July , 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Leon Holtzer, d/b/a  
Eastern General Vending <sup>Company</sup> (~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Leon Holtzer  
d/b/a Eastern General Vending Company  
41 Lincoln Avenue  
Roslyn Heights, 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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative~~  
~~of~~) 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

23rd day of July , 1974.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
LEON HOLTZER  
EASTERN GENERAL VENDING COMPANY

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Sales & Use  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~XXXXX~~ Period August 1, 1965  
through January 6, 1966.

State of New York  
County of Albany

Janet Mack 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 23rd day of July , 19 74, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Sol Kaplan, P.A.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Sol Kaplan, C.P.A.  
1 Great Neck Road  
Great Neck, 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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

23rd day of July , 1974.

*Joyce S. Van Patten*

*Janet Mack*



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214-A  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655  
MR. LEISNER 457-2657  
MR. COBURN 457-2896

**DATED:** Albany, New York  
**July 23, 1974**

**Leon Holtzer**  
**d/b/a Eastern General Vending Company**  
**41 Lincoln Avenue**  
**Roslyn Heights, New York**

**Dear Mr. Holtzer:**

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

Please take further notice that pursuant to  
Section(s) **1138 and 1243** 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.

Any 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.  
These will be referred to the proper party for  
reply.

Very truly yours,

**Nigel G. Wright**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
LEON HOLTZER	:	
d/b/a	:	
EASTERN GENERAL VENDING COMPANY	:	DETERMINATION
for a Redetermination or for Refund of	:	
Sales and Use Taxes under Articles 28	:	
and 29 of the Tax Law for the Period	:	
August 1, 1965 through January 6, 1966.	:	

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Leon Holtzer, d/b/a Eastern General Vending Company, filed an application for a redetermination of a determination issued on January 20, 1967, of sales and use taxes in the amounts totaling \$5,587.18 plus \$819.08 in penalty and interest for a total of \$6,406.26.

A hearing was duly held on September 14, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The applicant was represented by Sol Kaplan, P.A. The Sales Tax Bureau was represented by Saul Heckelman, Esq., appearing by Solomon Sies, Esq.

#### ISSUES

The issues in this case are (a) whether applicant's sales through vending machines qualify for the exemption provided in section 1115 (a)(13) of the Tax Law, and (b) whether a transfer of applicant's entire business to another party was taxable as a retail sale or whether it was not taxable, as applicant argues, as a mere "repossession" by the previous owner.

FINDINGS OF FACT

1. This case arises out of a vending machine business operated primarily on Long Island. Prior to 1962, it was operated either directly or indirectly by Casper J. Van Bree of Huntington, Long Island. During 1962, this business was sold to Leon Holtzer, the applicant herein, who continued the business under the name of Eastern General Vending Company. In January 1966, this business was transferred back to Mr. Van Bree who was acting as a nominee for a new corporation, the New Vending Corporation.

2. The transfer of the business in January 1966, the transfer here in question was accomplished by a bill of sale between Leon Holtzer and Casper J. Van Bree. This purported to transfer "the vending machine business" including vending machines, inventory, goodwill, and the trade name. The transferee assumed the obligations of the business including the chattel mortgage of Casper J. Van Bree dated December 28, 1962, and unsecured loans by others in amounts exceeding \$8,000.00. The transferee also gave notes amounting to \$20,000.00 and cash amounting to \$12,000.00. The transferor is bound to a covenant not to compete.

3. The business operated 183 vending machines in January 1966, as shown by the bill of sale. Cigarette machines totaled 57, candy and cake machines totaled 74, soda machines totaled 29, and coffee machines totaled 23. In addition, it had 70 other machines stored at its place of business.

4. Applicant's income on his ledgers show that more than half of his receipts came from the sale of cigarettes which, of course, sell for more than ten cents a pack.

5. Of the total deficiency, the amount \$4,080.33 plus penalty and interest is assessed by reason of the bulk sale of the business in January 1966. The sum of \$1,506.85 plus penalty and interest is attributable to sales of property in the ordinary course of business. Credit has been given for amounts paid with filed returns. Penalty and interest is charged at the rate of 5% for the first month of delinquency plus 1% a month as thereafter described in section 1145(a) of the Tax Law.

CONCLUSIONS OF LAW

All of the evidence adduced in this case indicates that the applicant was not "primarily engaged" in making sales of items at ten cents or less through his coin-operated vending machines. Applicant is, therefore, subject to tax (Tax Law section 1115(a)(13)).

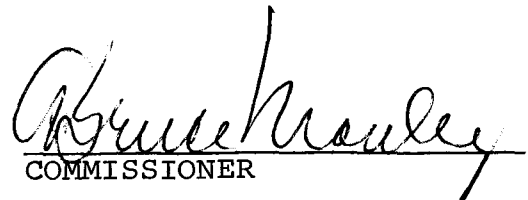
DETERMINATION

The determination of tax due under review is found to be correct and is due.

DATED: Albany, New York  
July 23, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

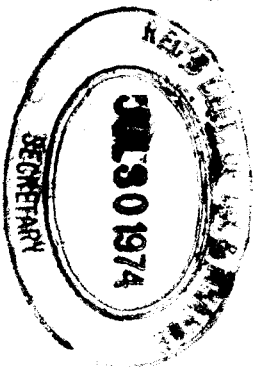
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STATE OF NEW YORK

Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12227



X  
Leon Holtzer  
d/b/a Eastern General Vending Company  
41 Lincoln Avenue  
Roslyn Heights, New York

DR Rook



56-70 Francis Lewis Blvd.  
Green Village, N.Y.  
11427





STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214-A  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655  
MR. LEISNER 457-2657  
MR. COBURN 457-2896

DATED: Albany, New York

July 23, 1974

Remailed: July 31, 1974

Leon Holtzer  
d/b/a Eastern General Vending Company  
41 Lincoln Avenue  
Roslyn Heights, New York

Dear Mr. Holtzer:

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

Please take further notice that pursuant to  
Section(s) 1138 and 1243 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.

Any 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.  
These will be referred to the proper party for  
reply.

Very truly yours,

Nigel G. Wright  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

AD-1.12 (8/73)

L. Holzer  
86-70 Fr. Lewis Blvd  
Queens Village, ny ny 11427

State of New York  
Department of Taxation & Finance  
Building 9 Room 214A  
State Campus  
Albany, ny 12227

Mr. Nigel Wright;

On August 1, 1974 I received the enclosed Determination of the n.y. State Tax Commission. I have never heard of Eastern General Vending Company nor the individuals involved in the determination. My State Income Tax records will bear this out. I don't know how my name got involved, but a further check of your records would bear me out. It seems to me if a more careful check of records these stupid mistakes would not happen. I expect a letter of apology in these matters.

Leon Holzer

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
LEON HOLTZER	:	
d/b/a	:	
EASTERN GENERAL VENDING COMPANY	:	DETERMINATION
for a Redetermination or for Refund of	:	
Sales and Use Taxes under Articles 28	:	
and 29 of the Tax Law for the Period	:	
August 1, 1965 through January 6, 1966.	:	

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Leon Holtzer, d/b/a Eastern General Vending Company, filed an application for a redetermination of a determination issued on January 20, 1967, of sales and use taxes in the amounts totaling \$5,587.18 plus \$819.08 in penalty and interest for a total of \$6,406.26.

A hearing was duly held on September 14, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The applicant was represented by Sol Kaplan, P.A. The Sales Tax Bureau was represented by Saul Heckelman, Esq., appearing by Solomon Sies, Esq.

ISSUES

The issues in this case are (a) whether applicant's sales through vending machines qualify for the exemption provided in section 1115 (a) (13) of the Tax Law, and (b) whether a transfer of applicant's entire business to another party was taxable as a retail sale or whether it was not taxable, as applicant argues, as a mere "repossession" by the previous owner.

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Application

of

of

LEON HOLTZER

Applicant

VERSUS

STATE OF NEW YORK

For a determination of the liability of  
said applicant for the tax on the sale of  
and use of the tax law for the period  
August 1, 1952 through January 1, 1953.

Leon Holtzer, d/b/a (Holtzer's) Lumber Company, filed  
an application for a determination of a determination issued on  
January 26, 1957, of sales and use taxes in the amount totaling  
\$2,587.18 plus \$619.08 in penalty and interest for a total of  
\$3,206.26.

A hearing was duly held on September 14, 1957, at the office  
of the State Tax Commission, 50 Nassau Street, New York City, before  
Michael A. Wright, Hearing Officer. The applicant was represented by  
Sol Kagan, P.A. The State Tax Commission was represented by Saul Hochman,  
Esq., appearing by counsel Sles, Esq.

ISSUE

The issues in this case are (a) whether applicant's sales  
through vending machines qualify for the exemption provided in  
Section 112 (a) (1) of the Tax Law, and (b) whether a transfer  
of applicant's entire business to another party was made in an  
asset sale or whether it was not taxable, as applicant argues,  
as a mere "reorganization" by the previous owner.

FINDINGS OF FACT

1. This case arises out of a vending machine business operated primarily on Long Island. Prior to 1962, it was operated either directly or indirectly by Casper J. Van Bree of Huntington, Long Island. During 1962, this business was sold to Leon Holtzer, the applicant herein, who continued the business under the name of Eastern General Vending Company. In January 1966, this business was transferred back to Mr. Van Bree who was acting as a nominee for a new corporation, the New Vending Corporation.

2. The transfer of the business in January 1966, the transfer here in question was accomplished by a bill of sale between Leon Holtzer and Casper J. Van Bree. This purported to transfer "the vending machine business" including vending machines, inventory, goodwill, and the trade name. The transferee assumed the obligations of the business including the chattel mortgage of Casper J. Van Bree dated December 28, 1962, and unsecured loans by others in amounts exceeding \$8,000.00. The transferee also gave notes amounting to \$20,000.00 and cash amounting to \$12,000.00. The transferor is bound to a covenant not to compete.

3. The business operated 183 vending machines in January 1966, as shown by the bill of sale. Cigarette machines totaled 57, candy and cake machines totaled 74, soda machines totaled 29, and coffee machines totaled 23. In addition, it had 70 other machines stored at its place of business.

4. Applicant's income on his ledgers show that more than half of his receipts came from the sale of cigarettes which, of course, sell for more than ten cents a pack.

STATE OF CALIFORNIA

I. This case arises out of a long running business operated primarily on Long Island Sound, New York, between certain other persons, beginning about 1960, which was sold to John Hottel, Inc., in 1972. This last sale was sold to John Hottel, Inc., directly or indirectly by Captain J. Van Dusen of Washington, Long

for a new corporation, the New Voting Corporation. was transferred back to Mr. Van Alen who was acting as a nominee of Macdon General Voting Company. In January 1960, this business the applicant holding who controlled the business until the date

2. The transfer of the business in January 1966, the transfer here in question was accomplished by a bill of sale between Isaac Holtzer and Cassius J. Van Arco. This purported to transfer

to a coverlet not to remove.

3. The business operating 107 vending machines in January 1966, as shown by the bill of sale, cigarette machines totaling 57, candy and cake machines totaling 14, soda machines totaling 2, and coffee machines totaling 23. In addition, it had 10 other machines stored at its place of business.

For more than two weeks a week.

5. Of the total deficiency, the amount \$4,080.33 plus penalty and interest is assessed by reason of the bulk sale of the business in January 1966. The sum of \$1,506.85 plus penalty and interest is attributable to sales of property in the ordinary course of business. Credit has been given for amounts paid with filed returns. Penalty and interest is charged at the rate of 5% for the first month of delinquency plus 1% a month as thereafter described in section 1145(a) of the Tax Law.

CONCLUSIONS OF LAW

All of the evidence adduced in this case indicates that the applicant was not "primarily engaged" in making sales of items at ten cents or less through his coin-operated vending machines. Applicant is, therefore, subject to tax (Tax Law section 1113(a)(13)).

DETERMINATION

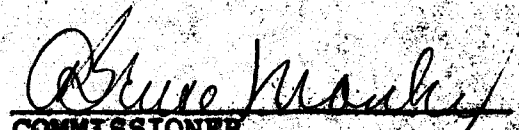
The determination of tax due under review is found to be correct and is due.


DATED: Albany, New York

July 23, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER



Of the total liability, the amount of \$1,000.00 plus penalty and interest is assessed by reason of the bulk sale of the business in January 1966. The sum of \$1,000.00 plus penalty and interest is attributable to sales of property in the ordinary course of business. Credit has been given for amounts paid with 11% of return, penalty and interest is charged at the rate of 1% for the first month of delinquency plus 1% a month thereafter described in section 1145(a) of the Tax Law.

#### COMMISSIONER OF TAX

All of the evidence adduced in this case indicates that the applicant was not "primarily engaged" in making sales of items of ten cents or less through his coin-operated vending machines. Applicant is, therefore, subject to tax under section 1145(a)(1).

#### DETERMINATION

The determination of the proper tax is found to be

correct and is due.

STATE TAX COMMISSION

DATE: July 23, 1966

JULY 23 1966

COMMISSIONER

COMMISSIONER

COMMISSIONER