

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
CANTEEN VENDING SERVICE CO. :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (~~REGISTERED~~) 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 ~~Year(s)~~ Period June 1, 1967
through May 31, 1972.

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 21st day of August , 1974 , she served the within
Notice of Decision (or Determination) by (~~certified~~) mail upon Canteen Vending
Service Co. (~~representative of~~) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Canteen Vending Service Co.

31 Sunset Street
Rochester, New York 14616

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

21st day of August , 1974.

Martha J. [Signature]

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CANTEEN VENDING SERVICE CO.

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 ~~years~~ Period June 1, 1967
through May 31, 1972

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 21st day of August , 1974 , she served the within
Notice of Decision (or Determination) by (~~certified~~) mail upon James W. Richards,
Esq., Martin, Dutcher, Cooke, Mousaw & Vigdor, Esqs.
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: James W. Richards, Esq.
Martin, Dutcher, Cooke, Mousaw & Vigdor, Esqs.
4th Floor, Genesee Building
Rochester, New York 14614
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

21st day of August , 1974

Martha J. J. J.

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

~~NORMAN K. MANLEY, PRESIDENT~~
Mario A. Procaccino

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
August 21, 1974

Canteen Vending Service Co.
31 Sunset Street
Rochester, New York 14616

Gentlemen:

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,

L. Robert Leisner
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
CANTEEN VENDING SERVICE CO.	:	DETERMINATION
for a Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for	:	
the Period June 1, 1967 through May 31, 1972.	:	

Applicant, Canteen Vending Service Co., applied for a revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1967, through May 31, 1972.

A formal hearing was held at the offices of the State Tax Commission, 1 Marine Midland Plaza, Rochester, New York, on Tuesday, March 13, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer, was represented by Martin, Dutcher, Cooke, Mousaw & Vigdor, Esqs. (James W. Richards, Esq., of counsel), and the Sales Tax Bureau was represented by Saul Heckelman, Esq. (Francis X. Boylan, Esq., of counsel).

ISSUE

Whether rentals of post-mix coffee and cold drink machines are exempt from sales tax by reason of section 1115(a)(12) of the Tax Law.

FINDINGS OF FACT

1. The taxpayer, Canteen Vending Service Co., timely filed New York State sales and use tax returns for the period June 1, 1967 through May 31, 1972.

2. Notices of Determination of sales and use taxes and penalties for the periods June 1, 1967, to May 31, 1970, and June 1, 1970, to May 31, 1972, was issued on January 15, 1971, and October 18, 1972, against the taxpayer under Notice Nos. 90,744,301 and 90,451,637.

3. The taxpayer applied for a revision of the determination of the deficiencies in sales tax.

4. The taxpayer, Canteen Vending Service Co., was engaged in the use of vending machines which vended coffee; gum; milk; soft drinks; carbonated drinks; candy; life savers; cigarettes; and post-mixed drinks. The controversy here in question involves the payment of sales tax on the rentals of coffee, soft drink and other post-mix drink machines.

5. Taxpayer, Canteen Vending Service Co., paid sales tax on the rentals of post-mix drink vending machines under protest claiming that these machines are used directly and exclusively in the manufacturing, processing and assembling of ingredients to produce the final tangible personal property. The process involved in dispensing post-mix drinks can be characterized as follows:

When a customer deposited a coin in a coffee machine, a series of electronic relays would be activated and fractional power would drop the cup and drop the ground coffee into a brewing mechanism. At that point, hot water would be forced under pressure into the brewing mechanism and hence it would brew the coffee. At that point, the customer would determine if he wanted cream or sugar and make said determination through a series of selection knobs on the face of the machine.

The carbonated drink machines operated in much the same fashion. The customer would deposit his coin and then select the flavor he wanted, if it was to be carbonated or uncarbonated and if he wanted ice or no ice. Through a series of electronic relays, a cup would be dropped and cold water, syrup and carbonated gas would mix to form the product.

6. Taxpayer reasonably believed that the rentals of post-mix drink machines were not subject to sales tax and requested that the penalty be cancelled.

CONCLUSIONS OF LAW

A. Although, taxpayer's coin-operated post-mix drink machines were used in a type of "processing" of raw materials, they are not used directly and exclusively in the production of tangible personal property. Their primary use is to vend and not to produce. Therefore, the rentals of post-mix coffee and cold drink machines are not exempt from sales tax by reason of section 1115(a)(12) of the Tax Law. Kwik Vend, Inc. v. Koontz, 94 Idaho 166, 483 P2d 928 (1971).


B. The penalty is cancelled and remanded.

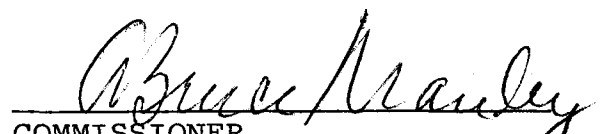
C. The deficiency or refund shall be recomputed in accordance with this decision and except as modified, the taxpayer's application is denied.

DATED: Albany, New York

August 21, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER