

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
DAGGETTS VENDING SERVICE, INC., :
CLARENCE H. DAGGETT d/b/a DAGGETTS :
CANDY VENDING SERVICE and CLARENCE H. :
DAGGETT d/b/a DAGGETTS CIGARETTE :
VENDING SERVICE :
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))~~ Periods August 1, :
1965 through August 31, 1969.

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

State of New York
County of Albany

LYNN WILSON, 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 14th day of March, 1973, she served the within Notice of Decision (or Determination) by (certified) mail upon DAGGETTS VENDING SERVICE, INC. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Daggetts Vending Service, Inc.
20 Meadow Drive
Glens Falls, New York 12801
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

14th day of March, 1973

Lynn Wilson
James H. Sumner

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
DAGGETTS VENDING SERVICE, INC., :
CLARENCE H. DAGGETT d/b/a DAGGETTS :
CANDY VENDING SERVICE and CLARENCE H. :
DAGGETT d/b/a DAGGETTS CIGARETTE :
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For a Redetermination of a Deficiency or
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Taxes under Article(s) 28 and 29 of the :
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State of New York
County of Albany

LYNN WILSON , 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 14th day of March , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon CLARENCE H. DAGGETT
d/b/a DAGGETTS CANDY
VENDING SERVICE (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Clarence H. Daggett
d/b/a Daggetts Candy Vending Service
20 Meadow Drive
Glens Falls, New York 12801
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

14th day of March , 1973

Martha J. J. J. J.

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
DAGGETTS VENDING SERVICE, INC.,
CLARENCE H. DAGGETT d/b/a DAGGETTS
CANDY VENDING SERVICE and CLARENCE H.
DAGGETT d/b/a DAGGETTS CIGARETTE :
VENDING SERVICE :

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)~~ Periods August 1,
1965 through August 31, 1969.

State of New York
County of Albany

LYNN WILSON , 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 14th day of March , 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon CLARENCE H. DAGGETT
d/b/a DAGGETTS CIGARETTE
VENDING SERVICE (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Clarence H. Daggett
d/b/a Daggetts Cigarette Vending Service
20 Meadow Drive
Glens Falls, New York 12801
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

14th day of March , 1973.

Martha Duraw

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
DAGGETTS VENDING SERVICE, INC., :
CLARENCE H. DAGGETT d/b/a DAGGETTS :
CANDY VENDING SERVICE and CLARENCE H. :
DAGGETT d/b/a DAGGETTS CIGARETTE :
VENDING SERVICE :

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 ~~XXXXXX~~ Periods August 1, :
1965 through August 31, 1969.

State of New York
County of Albany

LYNN WILSON , 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 14th day of March , 19 73, she served the within
Notice of Decision (or Determination) by (certified) mail upon FRANK V.

WILLIAMS, ESQ. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Frank V. Williams, Esq.
Quaker Village
Glens Falls, New York 12801

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

14th day of March , 1973.

Deborah A. Chase

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
March 14, 1973

Daggetts Vending Service, Inc.
20 Meadow Drive
Glens Falls, New York 12801

Gentlemen:

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

Please take further notice that pursuant to **sections 1138 and 1243**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** after
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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Paul S. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A
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AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
March 14, 1973

Clarence H. Daggett
d/b/a Daggetts Candy Vending Service
20 Meadow Drive
Glens Falls, New York 12801

Dear Mr. Daggett:

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

Please take further notice that pursuant to **sections 1138 and 1243**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** after
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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Paul B. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

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STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
March 14, 1973

Clarence H. Daggett
d/b/a Daggetts Cigarette Vending Service
20 Meadow Drive
Glens Falls, New York 12801

Dear Mr. Daggett:

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

Please take further notice that pursuant to **sections 1138 and 1243**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** after
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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Paul B. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE TAX COMMISSION

In the Matter of the Applications :
:
of :
:
DAGGETTS VENDING SERVICE, INC., :
CLARENCE H. DAGGETT d/b/a DAGGETTS :
CANDY VENDING SERVICE and CLARENCE :
H. DAGGETT d/b/a DAGGETTS CIGARETTE DETERMINATION
VENDING SERVICE :
:
for Revision of a Determination or for :
Refund of Sales and Use Taxes under :
Articles 28 and 29 of the Tax Law for :
the Periods August 1, 1965 through :
August 31, 1969. :

Applicants, Daggetts Vending Service, Inc., Clarence H. Daggett d/b/a Daggetts Candy Vending Service (hereinafter referred to as "Daggetts Candy Vending Service") and Clarence H. Daggett d/b/a Daggetts Cigarette Vending Service (hereinafter referred to as "Daggetts Cigarette Vending Service") have filed applications for revision of determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for periods August 1, 1965 through August 31, 1969. (File Nos. 90001442 and 90001454). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on November 30, 1972, at 10:00 A.M. Applicants appeared by Frank V. Williams, C.P.A. The Sales Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of Counsel).

I. Were applicants, Daggetts Vending Service, Inc., Daggetts

Candy Vending Service and Daggetts Cigarette Vending Service, primarily engaged in making sales of tangible personal property through coin operated vending machines at ten cents or less during the periods August 1, 1965 through August 31, 1969?

II. Was applicant, Daggetts Vending Service, Inc., required to pay over sales tax for the quarterly periods ending August 31, 1968, and August 31, 1969, based upon the effective rate of tax applicable to its receipts?

III. Did applicants, Daggetts Vending Service, Inc., Daggetts Candy Vending Service and Daggetts Cigarette Vending Service, have reasonable cause for failing to report a portion of their sales as taxable during the period August 1, 1965 through August 31, 1969?

FINDINGS OF FACT

1. Applicant, Daggetts Cigarette Vending Service, filed New York State and local sales and use tax returns for the period August 1, 1965 through May 31, 1968. It listed its type of business of said returns as "cigarette vending machines". It remitted to the Sales Tax Bureau the amount of sales tax due as set forth in said returns.

2. Applicant, Daggetts Candy Vending Service, registered as a vendor with the Sales Tax Bureau on September 1, 1967. It filed New York State and local sales and use tax returns for the period September 1, 1967 through May 31, 1968. It listed its type of business on said returns as "Candy Vending Service" or "5¢ & 10¢ Candy Vending Machines". It reported the amount of sales tax due on said returns as "none".

3. Applicant, Daggetts Vending Service, Inc., filed New York State and local sales and use tax returns for the period March 1, 1968 through August 31, 1969. It listed its type of business on said returns as "Cigarette and Candy Vending Machines". It remitted to the Sales Tax Bureau the amount of sales tax due as set forth in said returns.

4. On December 10, 1969, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Daggetts Vending Service, Inc., imposing additional sales tax for the periods ending August 31, 1968 and August 31, 1969, as a result of a field audit which disclosed additional taxable sales. It imposed additional sales tax in the sum of \$5,186.78 and penalty and interest in the sum of \$521.82. The auditor determined that the effective rate of tax was applicable to taxable sales for the quarters ending August 31, 1968 and August 31, 1969. The auditor also determined that there were candy sales totaling \$23,991.55 during the quarter ending August 31, 1969, which were not reported as taxable sales.

5. On December 11, 1969, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicants, Daggetts Candy Vending Service and Daggetts Cigarette Vending Service imposing additional sales tax for the period August 1, 1965 through April 31, 1968, as a result of a field audit which disclosed additional taxable sales. It imposed additional sales tax in the sum of \$2,205.59 and penalty and interest in the sum of \$773.12. The auditor in arriving at his determination treated the applicants as a single entity for purposes of sales tax liability.

He also determined that there were unreported taxable sales of candy prior to September 1, 1967.

6. Applicant, Daggetts Cigarette Vending Service, was engaged in the business of selling cigarettes, cigars, candy, peanuts and crackers through coin operated vending machines in Warren County and the surrounding areas during the period August 1, 1965 through August 31, 1967. It had been engaged in this business prior to 1965. Clarence H. Daggett was the sole proprietor of the business. The business was operated from a warehouse and garage located on Western Avenue in Glens Falls, New York. The same salesmen and vehicles were used to refill and service the cigarette machines and the candy machines on its routes.

7. Commencing September 1, 1967, Clarence H. Daggett reported sales of cigarettes on sales tax returns under the name of Daggetts Cigarette Vending Service and sales of candy on sales tax returns under the name of Daggetts Candy Vending Service. He continued this method of reporting sales until May 1, 1968, when he discontinued doing business as an unincorporated entity. The same salesmen and vehicles were used to refill and service the cigarette and candy machines. The operations were conducted from the same warehouse. Applicants failed to submit any documentary or other substantial evidence to prove that they were not in fact operated as a single entity under common ownership during this period.

8. Applicant, Daggetts Vending Service, Inc., was incorporated on May 1, 1968. Clarence H. Daggett was the president of the corporation. On the aforesaid date it acquired the coin operated vending machine operations previously conducted by Daggetts Cigarette

Vending Service and Daggetts Candy Vending Service. It continued the operation of the vending machine business in the same manner and from the same place as they had been conducted in the unincorporated form. It operated the vending machine business during the period from May 1, 1968 through August 31, 1969.

9. Applicant, Daggetts Cigarette Vending Service's sales of cigarettes totaled \$792,495.95 for the period August 1, 1965 through August 31, 1967. Its sales of candy for ten cents or less per item during said period totaled \$68,984.33. It did not include the candy sales in taxable sales on its sales tax returns for said period.

10. Applicant, Daggetts Cigarette Vending Service's sales of cigarettes during the period September 1, 1967 through April 30, 1968, totaled \$221,216.00. Applicant, Daggetts Candy Vending Service, sales of candy during the same period totaled \$35,685.00. Their combined sales of items for ten cents or less per item through coin operated vending machines amounted to less than 50% of their combined gross sales during said period.

11. Applicant, Daggetts Vending Service, Inc., sales of candy for ten cents or less per item through coin operated vending machines amounted to less than 50% of its gross sales during the period from May 1, 1968 through August 31, 1969.

12. Applicant, Daggetts Vending Service, Inc., taxable sales for the quarter ending August 31, 1968, were \$168,113.00. Its taxable sales for the period September 1, 1968 through August 31, 1969, were \$509,117.00.

13. Applicants, Daggetts Vending Service, Inc., Daggetts Candy

Vending Service and Daggetts Cigarette Vending Service's sales tax returns for the period August 1, 1965 through August 31, 1969, were prepared in accordance with the advice of their accountant. They extended their full cooperation in connection with the audit. The auditor recommended that penalties be waived.

CONCLUSIONS OF LAW

A. That applicant, Daggetts Cigarette Vending Service, was not primarily engaged in making sales of tangible personal property through coin operated vending machines at ten cents or less during the period August 1, 1965 through August 31, 1967, in accordance with the meaning and intent of section 1115(a)(13) of the Tax Law and therefore the Sales Tax Bureau properly imposed sales tax on candy sold by it for ten cents or less per item during said period.

B. That applicants, Daggetts Cigarette Vending Service and Daggetts Candy Vending Service, must be considered to be a single vendor during the period September 1, 1967 through April 30, 1968, since they, in fact, operated as a single entity under the same ownership during said period. That applicants, Daggetts Cigarette Vending Service and Daggetts Candy Vending Service, when considered as a single vendor, were not primarily engaged in making sales of tangible personal property through coin operated vending machines at ten cents or less during said period in accordance with the meaning and intent of section 1115(a)(13) of the Tax Law and therefore the Sales Tax Bureau properly imposed sales tax upon candy sold by Daggetts Candy Vending Service for ten cents or less per item during said period.

C. That applicant, Daggetts Vending Service, Inc., was not

primarily engaged in making sales of tangible personal property through coin operated vending machines at ten cents or less during the period May 1, 1968 through August 31, 1969, in accordance with the meaning and intent of section 1115(a)(13) of the Tax Law and therefore the Sales Tax Bureau properly imposed sales tax on candy sold by it for ten cents or less per item during said period.

D. That since applicant, Daggetts Vending Service, Inc.'s gross sales for the quarterly period ending August 31, 1969, plus the three preceding quarterly periods were not less than \$500,000.00, it was not subject to the provisions of former section 1137(a) of the Tax Law and therefore was required to pay sales tax for said quarterly period based upon the effective rate of tax applicable to its receipts as provided by former sections 1137(b) and 1137(c) of the Tax Law.

E. That since applicant, Daggetts Vending Service, Inc.'s gross sales for the quarterly period ending August 31, 1968, was not less than \$125,000.00, it was not subject to the provisions of former section 1137(a) of the Tax Law and therefore was required to pay sales tax for said quarterly period based upon the effective rate of tax applicable to its receipts as provided by former sections 1137(b) and 1137(c) of the Tax Law.

F. That applicants, Daggetts Vending Service, Inc., Daggetts Candy Vending Service and Daggetts Cigarette Vending Service, had reasonable cause for failing to report a portion of their sales as taxable during the period August 1, 1965 through August 31, 1969, and, therefore the penalty assessed pursuant to section 1145 of the Tax Law is waived.

G. That the applications of Daggetts Vending Service, Inc.,

Daggetts Candy Vending Service and Daggetts Cigarette Vending Service are granted to the extent of cancelling the penalties imposed pursuant to section 1145 of the Tax Law; that the Sales Tax Bureau is hereby directed to accordingly modify the notices of determination and demand for payment of sales and use taxes dated December 10, 1969 and December 11, 1969, and; that except as so granted, the applications are in all other respects denied.

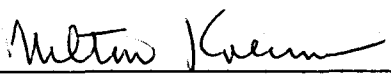
DATED: Albany, New York
March 14, 1973

STATE TAX COMMISSION



COMMISSIONER

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