

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

NEW VENDING CORPORATION

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 & 29 of the  
Tax Law for the ~~Year(s)~~ Period January :1, 1966  
through October 24, 1969

State of New York  
County of Albany

Martha Funaro , 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 22nd day of August , 19 74, she served the within  
Notice of Decision (or Determination) by (~~certified~~) mail upon New Vending  
Corporation (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: New Vending Corporation  
P.O. Box 449  
Huntington, 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

22nd day of August , 19 74

Janet Macel

Martha Funaro

APR 24 1974  
STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

Department of Taxation and Finance

STATE CAMPUS

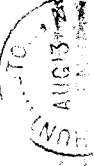
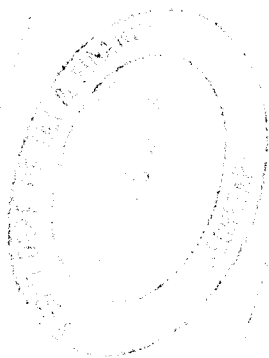
ALBANY, N. Y. 12227

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New Vending Corporation  
P.O. Box 449  
Huntington, New York

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JUL 24 PM 1974

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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
NEW VENDING CORPORATION and  
CASPER VAN BREE and VIVIAN VAN BREE,  
Each individually and as a corporate officer

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 January: 1, 1966  
through October 24, 1969.

State of New York  
County of Albany


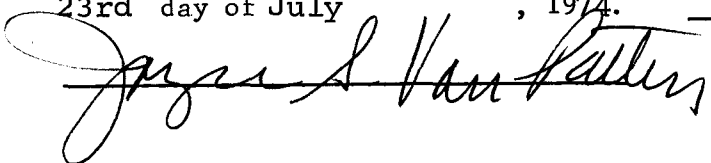
Janet Mack , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 23rd day of July , 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon New Vending  
Corporation ~~(representative of the)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: New Vending Corporation  
P.O. Box 449  
Huntington, 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 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

23rd day of July , 1974.

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
NEW VENDING CORPORATION and : AFFIDAVIT OF MAILING  
CASPER VAN BREE and VIVIAN VAN BREE, OF NOTICE OF DECISION  
Each individually and as a corporate officer 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 ~~Year(s)~~ Period January: 1, 1966  
through October 24, 1969.

State of New York  
County of Albany

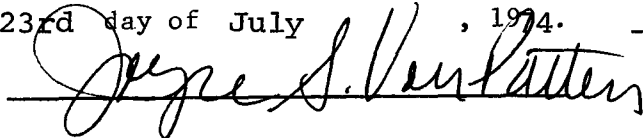
Janet Mack, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 23rd day of July , 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Casper Van Bree  
and Vivian Van Bree (~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. & Mrs. Casper Van Bree  
90 East Shore Road  
Huntington Bay, New York

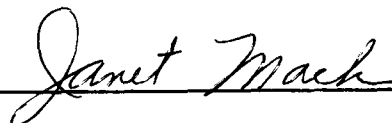
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

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  
NEW VENDING CORPORATION and : AFFIDAVIT OF MAILING  
CASPER VAN BREE and VIVIAN VAN BREE OF NOTICE OF DECISION  
Each individually and as a corporate officer 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 January 1, 1966  
through October 24, 1969.

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 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  
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.

*George A. Van Patten*

*Janet Mack*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
NEW VENDING CORPORATION and : AFFIDAVIT OF MAILING  
CASPER VAN BREE and VIVIAN VAN BREE OF NOTICE OF DECISION  
Each individually and as a corporate officer 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 January 1, 1966  
through October 24, 1969.

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 Hyman Greenberg,  
Esq.

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

391 East 149th Street  
Bronx, New York 10455

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

*George S. VanPatter*

*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

New Vending Corporation  
P.O. Box 442  
Huntington, New York

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,

**Nigel G. Wright**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

AD-1.12 (8/73)





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

**Mr. & Mrs. Casper Van Bree**  
**90 East Shore Road**  
**Huntington Bay, New York**

**Dear Mr. & Mrs. Van Bree:**

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

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
NEW VENDING CORPORATION and	:	
CASPER VAN BREE and VIVIAN VAN BREE,	:	
Each individually and as a corporate officer	:	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 January 1, 1966 through	:	
October 24, 1969.	:	

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New Vending Corporation filed an application for the redetermination of a notice of determination issued under date of December 20, 1969, of sales taxes due in the amount of \$12,708.62 plus penalty and interest of \$4,105.79 for a total of \$16,814.41 under Article 28 of the Tax Law for the period January 1, 1966 through October 24, 1969.

A hearing was duly held on September 14, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, 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. Also present was Hyman Greenberg, Esq., of Bronx County representing New Island Vending Corporation, a subsequent transferee from applicant, who was named in the determination in issue but who had not made a timely protest.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether applicant's sales through vending machines qualify for the exemption provided in section 1115(a)(13) of the Tax Law.

FINDINGS OF FACT

1. The determination of tax due is based upon an audit showing that applicant had sales made through vending machines subject to sales tax and purchases subject to use tax. Credit was given for tax paid on returns which were filed. The purchases subject to use tax were the book value of vending machine equipment acquired in January 1966. The amount thereof is not in dispute (a later sale of the business on October 24, 1969, to New Island Vending Corporation was found to be tax paid and it is not in issue).

2. Applicant's sales are made entirely through vending machines. Applicant's audited gross sales on its books for the period January 1, 1966 through October 24, 1969, were from the following sources: cigarettes, 55.84%; candy, 21.6%; soda, 14.55%; coffee, 7.19%; cakes, .59%; and hot foods, .22%. (The coffee cakes and hot foods amounting to 8% of the value of sales were exempt from tax regardless of price and were not assessed.)

3. The items selling for ten cents or less were candy, soda, coffee and cakes, accounting for 43.93% of the value of total sales. Such items amount to a much higher proportion of sales in terms of the number of sales but the exact amount cannot be determined from the evidence produced.

CONCLUSIONS OF LAW

A. 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 (Tax Law section 1115(a)(13)).

B. The transfer here in question was in form, a sale and not a mere "repossession". Even if, however, it did constitute

a "repossession" under a chattel mortgage the transfer would be taxable as a "sale" under the definition of sale as a "transfer of title or possession or both...in any manner or by any means whatsoever for a consideration..." (Tax Law section 1101(b)(5)). This treatment of a repossession of tangible property as a sale for purposes of a tax on the tangible property itself is to be distinguished from the treatment of a repossession under section 1141(c) of the Tax Law. That section under certain conditions imposes upon a transferee the obligation to pay the sales taxes of his transferor which were incurred on transactions in the ordinary course of the transferor's business. The transfer of property from the mortgagor to the mortgagee in satisfaction of the lien or security interest is not a sale within the meaning of that section. That does not, however, affect the question of the treatment of a repossession under section 1101(b)(5), which is the issue in this case.


DETERMINATION

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

DATED: Albany, New York  
July 23, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER



11-1-1964

1. 1. The first part of the document is a list of the names of the persons who have been named in the document.  
 2. 2. The second part of the document is a list of the names of the persons who have been named in the document.  
 3. 3. The third part of the document is a list of the names of the persons who have been named in the document.  
 4. 4. The fourth part of the document is a list of the names of the persons who have been named in the document.  
 5. 5. The fifth part of the document is a list of the names of the persons who have been named in the document.

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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  
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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

Mr. & Mrs. Casper Van Bree  
90 East Shore Road  
Huntington Bay, New York

Dear Mr. & Mrs. Van Bree:

Please take notice of the DETERMINATION  
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Please take further notice that pursuant to  
Section(s) 1138 and 1243 of the Tax Law, any  
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from the date of this notice.

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decision or concerning any other matter relative  
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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	:	
NEW VENDING CORPORATION and	:	
CASPER VAN BREE and VIVIAN VAN BREE,	:	
Each individually and as a corporate officer	:	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 January 1, 1966 through	:	
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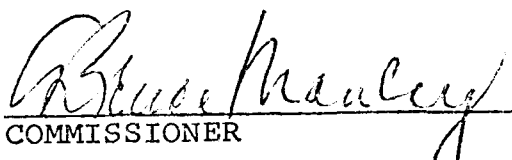
DETERMINATION

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

DATED: Albany, New York  
July 23, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER