STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NEW VENDING CORPORATION

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

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

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 Mack

Martha Funaro

AD-1.30 (1/74)

SCHENECTADY
JUL 24
PM
1974

AD 32 (8-73) 250M

STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N. Y. 12227

204267

SCHENECTADY
JUL 24
PM
1974
N.Y. 12

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

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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

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.

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

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 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
23rd day of July, 1974.

Janet Mack

Joyce L. Van Patten

AD-1.30 (1/74)

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
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.

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

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.

Janet Mack

Joyce S. VanPatten

AD-1.30 (1/74)

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
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.

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

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.

Janet Mack

Joyce A. VanPatten

AD-1.30 (1/74)

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
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.

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

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.

Janet Mack

Joyce S. VanPatten

AD-1.30 (1/74)

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION,
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

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 449
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 decision 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

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

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

AREA CODE 518

STATE TAX COMMISSION,
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

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 decision 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

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

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.	: : : : :	

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

AD 32 (6-73) 250M

STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N. Y. 12227

SCHENECTADY N.Y. 123
JUL 24
PM
1974

Dr Book

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

Box 56
Huntington

REC'D DEPT. OF TAX & FIN'CE
JUL 31 1974
SECRETARY

Received

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
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DATED: Albany, New York
July 23, 1974

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90 East Shore Road
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Very truly yours,

Nigel G. Wright

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

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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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