

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SUPERIOR VENDING SERVICE INC.

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 ~~year(s)~~ Period August, 1965
through August, 1966.

State of New York
County of Albany

Edward Rook ~~Martha Finaro~~, 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 15th day of May, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert L.
Marinelli, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

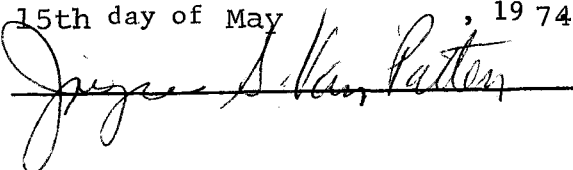
wrapper addressed as follows: Robert L. Marinelli, Esq.
11600 Liberty Bank Building
Buffalo, New York

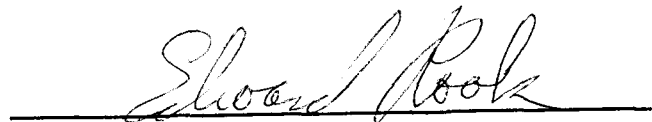
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

15th day of May, 1974





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SUPERIOR VENDING SERVICE INC. :

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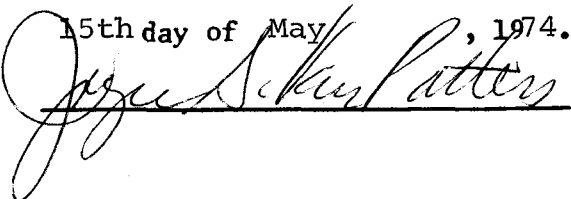
State of New York
County of Albany

Edward Rook ~~XXXXXX XXXXXX~~, 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 15th day of May , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Superior 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: Superior Vending Service Inc.
1395 Clinton Street
Buffalo, New York 14206
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

15th day of May, 1974.


James S. Kelly, Attorney


Edward Rook



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
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

~~MARIO A. PROCACCINO~~
~~PRESIDENT~~

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York

May 15, 1974

**Superior Vending Service Inc.
1395 Clinton Street
Buffalo, New York 14206**

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** of
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,



L. Robert Leisner
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
SUPERIOR VENDING SERVICE INC.	:	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 August, 1965 through August,	:	
1966.	:	
	:	

Superior Vending Service Inc. 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 August, 1965 through August, 1966.

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York on October 19, 1971, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Robert L. Marinelli and the Sales Tax Bureau was represented by Saul Heckelman, Esq. (Alexander Weiss, Esq., of Counsel).

ISSUES

I. Where the taxpayer collected a tax which was less than the statutory rate and remitted the actual collections, was it liable for the statutory rate?

II. Was the denial of a cash refund proper where the taxpayer turned in unused five-cent cigarette stamps in the amount of \$1,454.42 on August 17, 1965 rather than April 30, 1965, as specified in the regulation?

III. Was there any other remedy available to the taxpayer for the unused stamps?

FINDINGS OF FACT

1. The taxpayer, Superior Vending Service Inc., timely filed New York State sales and use tax returns for the period August, 1965 through August, 1966.

2. A Notice of Determination of deficiencies in sales tax for the period in issue was issued on December 6, 1966, against the taxpayer under Notice No. 16-0799714.

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

4. Between March 25, 1965 to April 9, 1965, the taxpayer purchased additional five-cent tax stamps when the cigarette tax was raised from five cents to ten cents.

The taxpayer returned \$1,454.42 of unused tax stamps for a refund on August 17, 1965. This application for a refund was denied on January 31, 1967, by the Miscellaneous Tax Bureau under Regulation 333.6 (March 22, 1965).

5. The Sales Tax Bureau asserted additional sales tax, interest, and penalty in the total amount of \$6,803.98 for the period of August, 1965 through August, 1966. The assessment was based on the fact that sales of cigarettes were made in jurisdictions of the two percent rate and in four percent rate jurisdictions of Erie County and Niagara Falls. In the four percent jurisdictions, the remittance was only 3.3% which was less than the four percent statutory rate.

6. At the hearing, the taxpayer argued that as a matter of law it could not be held liable for more tax than it had actually

collected and that the statute barred it from collecting any more than had actually been collected. The taxpayer protested this money actually came not from purchasers, but from its own pockets.

7. The taxpayer also contended that it should have been granted a refund of \$1,454.42 and that the denial of the refund was erroneous. It also asserted that the unused stamps should be applied against the sales tax, if any. It also sought relief from penalties.

CONCLUSIONS OF LAW

A. The determination of the sales tax assessment pursuant to the statutory rates, rather than the amount actually collected, is sustained. Matter of Komp v. S.T.C. 56 Misc. 824.

B. The denial of the cash refund by the Miscellaneous Tax Bureau is sustained. Such a refund requires audit by the state comptroller, (section 476 of the Tax Law). Clearly the refund application was filed, after April 30, 1965, and any refund by the Miscellaneous Tax Bureau is not allowed by Regulation 333.6 (March 22, 1965).

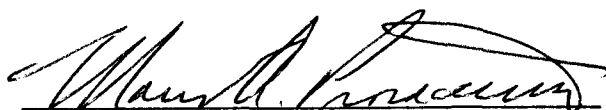
However the Commission may permit redemption of the unused stamps under section 476 of the Tax Law by a credit of \$1,454.42 against the amount of sales tax assessed.


C. The proposed sales tax penalties are abated. The sales tax assessment shall reflect a credit of \$1,454.42 as of August, 1965 for redemption of the unused stamps.

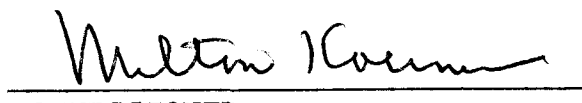
D. The taxpayer's application is in all other respects denied.
Pursuant to the Tax Law, interest shall be added to the total
amount of sales tax due until paid.

DATED: Albany, New York
May 15, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER