

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ESTATE OF ALVIN A. GATES
T/A QUEENNAIRE INN-CORTLAND VENDING
SERVICE
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 December 1, 1965
through February 29, 1968.

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

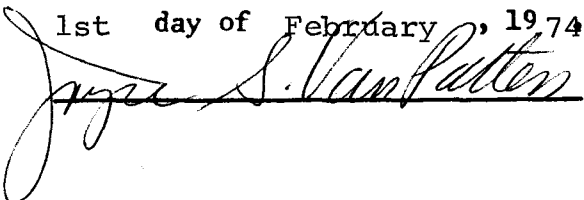
State of New York
County of Albany

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 1st day of February , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon Estate of Alvin A.
Queennaire Inn-
Cortland 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: Estate of Alvin A. Gates
T/A Queennaire Inn-Cortland
Vending Service
4 Carroll Street
Cortland, New York, 13045
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

1st day of February , 19 74


J. S. Van Patten


Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ESTATE OF ALVIN A. GATES-T/A QUEENNAIRE INN-
CORTLAND VENDING SERVICE

AFFIDAVIT OF MAILING
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BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
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Taxes under Article(s) 28 & 29 of the
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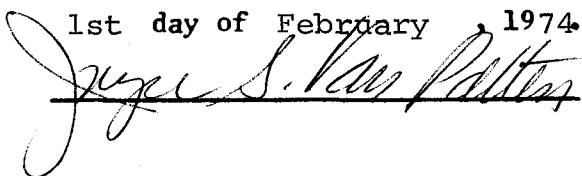
State of New York
County of Albany

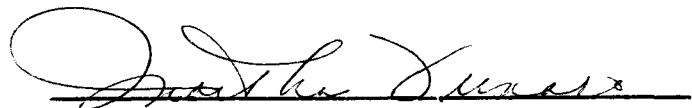
Martha Funaro, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1st day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Marine Midland Trust
of Southern New York, (representative of) the petitioner in the within Co.
Executors
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Marine Midland Trust Co.
of Southern New York, Executors
84 Court Street
Binghamton, New York 13902
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

1st day of February, 1974.


J. S. Van Patten


Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ESTATE OF ALVIN A. GATES-T/A QUEENNAIRE INN-
CORTLAND VENDING SERVICE

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 December 1, 1965
through February 29, 1968.

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 1st day of February , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Donald W. Yager, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Donald W. Yager, Esq.
15 Church Street
Cortland, New York 13045

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

1st day of February , 1974

Judge S. Van Patten

Martha Funaro



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
Mario A. Procaccino
~~XXXXXXXXXX~~, ~~XXXX~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York
February 1, 1974

Estate of Alvin A. Gates
T/A Queensaire Inn-Cortland
Vending Service
4 Carroll Street
Cortland, New York 13045

Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1128 & 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
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	:	
ESTATE OF ALVIN A. GATES	:	
T/A QUEENNAIRE INN-CORTLAND VENDING SERVICE	:	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 December 1, 1965 through	:	
February 29, 1968.	:	

Applicants, Estate of Alvin A. Gates, T/A Queenaire Inn-Cortland Vending Service, 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 December 1, 1965 through February 29, 1968.

The case was submitted for decision on the information in the file and referred to by L. Robert Leisner, Hearing Officer. The taxpayers were represented by Donald W. Yaher, Esq., and the Sales Tax Bureau was represented by Saul Heckelman, Esq.

ISSUE

Whether sales taxes were paid on coin operated amusement devices by the taxpayers and whether the same should be refunded.

FINDINGS OF FACT

1. The taxpayers, Estate of Alvin A. Gates, T/A Queenaire Inn-Cortland Vending Service, timely filed New York State sales and use tax returns for the period December 1, 1965 through February 29, 1968.

2. A denial of refund of sales and use taxes for the period in issue was issued on April 10, 1970, against the taxpayers under I.D. No. 71-32136-02.

3. The taxpayers applied for a revision of that determination.

4. The taxpayers applied for a refund of sales tax for coin operated amusement devices. Under Bathrick Enterprises v. Murphy, infra.

5. No sales tax was in fact collected and remitted for coin operated amusement devices by the location owner. All sales tax paid by the taxpayers, the coin machine operators, was for their portion of the sales receipts.

6. With respect to the taxpayers' claim, it appears that the amount claimed in each period was paid by the taxpayers, except for the period ended February 29, 1968, which is for an amount which is less, to wit \$597.70. A copy of the claim for refund is appended to this determination as Exhibit "A".


DETERMINATION

A. The taxpayers' claim for refund is granted for each period except for the period ended February 29, 1968, which is reduced to \$597.70. (See Appendix A) Bathrick Enterprises v. Murphy, 27 A.D. 2d 215, 23 N.Y. 2d 664.

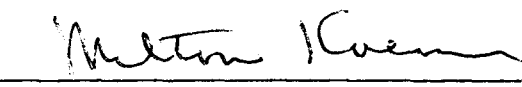
B. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
February 1, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

RECEIVED

DEPT. OF TAX & FINANCE STATE OF NEW YORK - DEPARTMENT OF TAXATION AND FINANCE
SALES TAX BUREAU
A & R UNITS
STATE CAMPUS, ALBANY, N.Y. 12226

JAN 8 1969

APPLICATION FOR CREDIT OR REFUND OF STATE AND LOCAL SALES OR USE TAX

Refer to:

for

TYPE OR PRINT			IDENTIFICATION NO. (IF REGISTERED VENDOR)
NAME OF CLAIMANT Alvin H. Gates DBA Cortland Vending Service			71-32136-02
STREET ADDRESS 4 Carroll Street			PERIOD COVERED BY CLAIM December 1965 to February 1968
CITY Cortland	STATE New York	ZIP CODE 13045	REFUND CLAIMED \$ 7,445.65
NAME OF REPRESENTATIVE (IF ANY)			CREDIT CLAIMED \$
STREET ADDRESS			IF CREDIT SHOWN ABOVE HAS ALREADY BEEN CLAIMED ON A RETURN, INDICATE PERIOD
CITY	STATE	ZIP CODE	

Give a full explanation below, including all facts on which your claim is based. Use additional sheets if necessary and submit all documents necessary to properly substantiate your claim.

New York Sales Tax was paid on receipts from coin-operated amusement devices, such as automatic phonographs, bowling games and the like, and the Bathrick decision found these receipts to be non-taxable.

The receipts from these devices and the sales tax paid is shown below:

<u>QUARTER ENDING</u>	<u>RECEIPTS</u>	<u>TAX</u>
February - 1966	\$27,589.40	\$711.65
May - 1966	28,368.45	762.00
August - 1966	27,905.80	774.00
November - 1966	27,592.45	799.40
February - 1967	27,787.05	780.30
May - 1967	31,451.85	983.30
August - 1967	27,854.15	862.85
November - 1967	28,351.95	860.25
February - 1968	29,400.70	911.90

TOTAL \$7,445.65

597.90

appendix "A"

I, Alvin H. Gates, the claimant named above, or partner, officer, or other authorized representative of such claimant, do hereby make application for refund and/or credit of sales or use tax, pursuant to the New York State Tax Law, and certify that all New York State sales and use taxes, if any, for which this claim is filed, have been paid; that no portion of the tax has been refunded or credited to me by any vendor; and that this claim does not include any items for which refund or credit was previously received.

SIGNATURE <u>Alvin H. Gates</u>	TITLE Owner	DATE 1/6/69
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SEE INSTRUCTIONS ON THE BACK OF THIS FORM

APPENDIX "A"