

**BUREAU OF LAW
MEMORANDUM**

TO: Benjamin Sheber, Sales Tax Bureau
FROM: James Scott
SUBJECT: Transfer of Files

Joseph Auto Co., Inc.
✓ **Elmira Coca-Cola Bottling Works, Inc.**
Latham Ready Mix, Inc.

The taxpayers in the foregoing matters have failed to institute an Article 78 proceeding within the statutory period of time.

Said files are herewith returned for further administrative disposition.

Associate Attorney

JS:lk
Enc.

cc: Edward Rook
June 14, 1971

SAYLES, EVANS, BRAYTON, PALMER & TIFFT

415 EAST WATER STREET

ELMIRA, NEW YORK

PIERRE W. EVANS
CHARLES L. BRAYTON
WILLIAM E. PALMER
BELA C. TIFFT
JOHN H. HAMILTON
KENNETH A. TIFFT
EDWARD B. HOFFMAN
ALAN PARSONS
LEWIS W. MORSE, JR.

EDWIN J. CARPENTER, JR.
WILLIAM R. PALMER
J. PHILIP HUNTER

February 10, 1971.

Mr. Lawrence A. Newman,

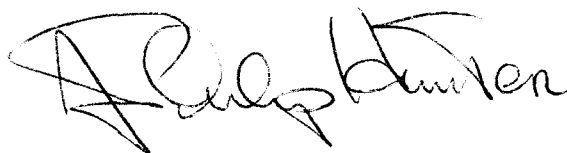
Albany, N. Y.

Dear Sir:

On November 30, 1970 you wrote me stating that the application of Elmira Coca-Cola Bottling Works, Inc. for a determination in regard to its sales tax liability for a number of years was at that time before the Tax Commission for their consideration. A number of weeks ago an officer of Elmira Coca-Cola Bottling Works called to advise that he had received notice of the determination. This law firm has received no such notification and I would appreciate it if you could forward to me a copy of same together with a copy of the decision.

Thank you for your assistance.

Very truly yours,

A handwritten signature in dark ink, appearing to read "J. Philip Hunter". The signature is fluid and cursive, with the first name "J." and last name "Hunter" being the most legible parts.

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ELMIRA COCA-COLA BOTTLING WORKS, INC.	:	
	:	DETERMINATION
For Revision of a determination or	:	
For Refund of Sales and Use Taxes	:	
under Article 28 and 29 of the	:	
Tax Law for the period September 1,	:	
1965 through November 9, 1967.	:	

Elmira Coca-Cola Bottling Works, Inc. applied for Revision of a determination assessing additional Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the period September 1, 1965 through November 9, 1967. A formal hearing was held before Alfred Rubenstein, Hearing Officer, in the offices of the State Tax Commission in the City of Binghamton on October 30, 1968. The applicant was represented by J. Phillip Hunter, Esq.

FINDINGS OF FACT

1. The issue in this case is whether deposit bottles become a component part of a product produced for sale under Section 1118 (4) of the Tax Law and are therefore exempt from State and local Sales and Use Tax.

2. The applicant was engaged in the bottling of soft drinks. Its entire business consisted of bottling in deposit bottles or acting as a distributor for canned beverages. The glass deposit bottles used by the applicant were either purchased new outside New York or those returned by retail dealers were reused. Title to the bottles stayed with the applicant at all times. Retailers

paid to the applicant a deposit on each bottle which was a fraction of the cost of the bottle, this amount being credited to the retailer when the bottles were returned to the plant.

3. An audit conducted by the Sales Tax Bureau for the period in question resulted in a notice of determination and demand, notice #90,050,834, dated June 19, 1968, in the amount of \$2,354.24 plus penalty and interest which the applicant paid.

4. The applicant timely filed an application for revision of the determination, requesting a refund in the amount of \$2,183.75. At the formal hearing the applicant reduced this claim to \$2,090.37.

5. Of the Assessment, \$776.12 was imposed because Sales Taxes were not paid on the purchase by the applicant of returnable bottles; \$269.64 was assessed on returnable bottles sold, upon dissolution of the applicant company, in a bulk sale. The total of \$1,045.76 is part of applicant's request for refund.

6. The remainder of the \$2,090.37 refund claimed consists of Sales Taxes amounting to \$1,044.61 which the applicant paid to suppliers on some purchases of deposit bottles.

DETERMINATION

A. The applicant has failed to sustain his burden of proof that the deposit bottles became a component part of the product produced.

B. The application for revision is therefore denied and the determination is sustained.

DATED: Albany, New York

January 19, 1971

STATE TAX COMMISSION

Norman Galbraith

COMMISSIONER

Bruce Hawley

COMMISSIONER

Milton Koenig

COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Elmira Coca-Cola Bottling Works, Inc.

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) Sep. 1, 1965
thru Nov. 9, 1967

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 19th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Elmira Coca-Cola Bottling Works, Inc. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Elmira Coca-Cola Bottling Works, Inc.
415 West Second Street
Elmira, 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

19th day of January, 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Elmira Coca-Cola Bottling Works, Inc.

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) Sep. 1, 1965 :
thru Nov. 9, 1967

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age, and that on the 19th day of January , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Elmira Coca-
Cola Bottling Works, Inc. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Josiah J. Willard, Jr., President
P.O. Box 73
Elmira, New York 14902

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

19th day of January , 19 71

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Elmira Coca-Cola Bottling Works, Inc.

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) Sep. 1, 1965 thru

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

Nov. 9, 1967

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 16th day of February , 19 71, she served the within Notice of Decision (or Determination) by (certified) mail upon Elmira Coca-Cola Bottling Works, Inc. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: J. Philip Hunter
Sayles, Evans, Brayton, Palmer & Tifft
415 East Water Street
Elmira, 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

16th day of February , 1971.

Linda Wilson

Martha Funaro