

STATE OF NEW YORK  
STATE TAX COMMISSION

*Nehe Bottling Co., Inc.  
Sales & Use  
1971*

In the Matter of the Petition

of

NEHI BOTTLING CO., INC.

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))~~ periods ending  
Aug. 31, 1965 thru Feb. 28, 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 8th day of June , 1971, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Donald C.

Lubick (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Donald C. Lubick  
c/o Hodgson, Russ, Andrews, Woods & Goodyear  
One M & T Plaza  
Buffalo, New York 14203

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

8th day of June , 1971.

*Linda Wilson*

*Martha Funaro*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

NEHI BOTTLING CO., 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))~~ periods ending  
Aug. 31, 1965 thru Feb. 28, 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 8th day of June, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Nehi Bottling Co., Inc. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Nehi Bottling Co., Inc.  
415 Sycamore Street  
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

8th day of June, 1971.

Linda Wilson

Martha Funaro

JOHN C. DANFORTH  
ATTORNEY GENERAL OF MISSOURI  
Box 899  
JEFFERSON CITY, MISSOURI

Administrative Secretary  
New York State Tax Commission  
State Capitol  
Albany, New York

*Henry*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
NEHI BOTTLING CO., INC.	:	DETERMINATION
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under,	:	
Articles 28 & 29 of the Tax Law for	:	
the periods ended August 31, 1965	:	
through February 28, 1967.	:	

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Nehi Bottling Company, Inc., a registered vendor, applied for a revision of a determination of additional sales and use taxes under Articles 28 & 29 of the Tax Law for the periods August 1, 1965, through February 28, 1967. A formal hearing was held before Alfred Rubenstein, Hearing Officer, in the offices of the State Tax Commission in the City of Buffalo on September 17, 1968. The applicant was represented by Messrs. Hodgson, Russ, Andrews, Woods & Goodyear, Esqs. (Donald C. Lubick, Esq. of Counsel).

FINDINGS OF FACT

1. The vendor filed New York State sales and use tax returns for the period of August 1, 1965, through February 28, 1967.

2. On September 28, 1967, the Department of Taxation and Finance issued notice of determination and demand No. 90753040 in the amount of \$3,566.61 plus penalty and interest of \$616.41, together totalling \$4,183.02. The amount included penalty at 5% and interest at 1% per month. Vendor paid \$3,868.91 on account on or about 90 days following the issuance of the determination.

The notice was based on a finding by the bureau that vendor's purchases of deposit bottles, carrying cases for the bottles and partitions for the cases are taxable purchases at retail under section 1101(b)(4) of the Tax Law.

3. The vendor is a bottler of carbonated beverages. All products except for a few vending machine sales, are sold to retailers and distributors who are registered vendors. The vendor's

business consisted of filling deposit bottles or purchasing canned beverages for resale.

4. Ownership of the bottles stayed with the vendor at all times. Retailers and distributors paid the vendor a deposit on each bottle. The payment was less than the cost of the bottle. The deposit amount was credited to the retailers and distributors when the bottles were returned to the plant.

5. The determination included imposition of use taxes on purchases of filled metal cans for resale, import duties, custom house fees, and delivery bond fees. The taxes attributed to these items amounted to \$8.15 for the period ended August 31, 1965, and \$32.01 for the period ended November 30, 1965, or a total of \$40.16.

6. The vendor failed to sustain its burden of proof that the deposit bottles, carrying cases and partitions became a component part of the product produced and sold to its customers.

DETERMINATION

A. The deposit bottles, carrying cases and partitions are taxable purchases under section 1101(b)(4) of the Tax Law.

B. The filled non-returnable metal cans purchased by the vendor and resold, import duties, custom house fees, and delivery bond fees were erroneously included in the notice of determination and are nontaxable under Articles 28 & 29 of the Tax Law.

C. The penalty at 5% and interest at 12% per annum are lawful and are sustained.

D. The application is sustained in part and the determination is reduced to \$3,526.31, [\$3,566.61, item 2 above less \$40.16, item 5 above], plus penalties and interest as sustained in item C above.

DATED: Albany, New York

*June 8, 1971.*

STATE TAX COMMISSION

*Norman Gelber*  
COMMISSIONER

*Bruce Mander*  
COMMISSIONER

*Milton Korman*  
COMMISSIONER

June 20, 1972

Peter H. Ruger, Esq.  
Assistant Attorney General  
Attorney General of Missouri  
Jefferson City, Missouri

Dear Mr. Ruger:

In regard to your letter of June 14, 1972, I am  
enclosing a copy of the Nehi Bottling Co., Inc.  
determination.

Yours very truly,

EDWARD ROOK  
Secretary to the  
State Tax Commission

Enclosure



JOHN C. DANFORTH  
ATTORNEY GENERAL

**OFFICES OF THE  
ATTORNEY GENERAL OF MISSOURI  
JEFFERSON CITY**

June 14, 1972

Administrative Secretary  
New York State Tax Commission  
State Capitol  
Albany, New York

Sir:

Please send me copy of your decision in the recent case styled Matter of the Application of Nehi Bottling Co., Inc. This was the decision that held that returnable soft drink bottles were subject to the New York State sales tax.

Thank you for your assistance.

Very truly yours,

PETER H. RUGER  
Assistant Attorney General

PHR:fs