

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~Decision~~
Application :
of :
TOWNE & COUNTRY BEVERAGE
DISTR., 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 :
8/1/65 to 8/31/68.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~CERTIFIED~~ MAIL

State of New York
County of Albany

MARY GROFF, 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 9th day of October, 1975, she served the within
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon TOWNE & COUNTRY
BEVERAGE DISTR., INC. ~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Towne & Country Beverage Distr., Inc.
440 Broadway
Menands, New York 12204

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)~~
~~(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

9th day of October, 1975

Janet Mach

Mary Groff

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the ~~XXXXXXXXXX~~
Application :
of :
: AFFIDAVIT OF MAILING
: OF NOTICE OF DECISION
: BY ~~XXXXXXXXXX~~ MAIL
TOWNE & COUNTRY BEVERAGE :
DISTR., 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 :
8/1/65 to 8/31/68.

State of New York
County of Albany

MARY GROFF, 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 9th day of October, 1975, she served the within
Notice of ~~XXXXXXXXXX~~ Determination) by ~~(certified)~~ mail upon JOHN R. STRACHAN

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. John R. Strachan
3 Crumite Road
Loudonville, New York 12211

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

9th day of October, 1975.

Janet Mack

Mary Groff



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT
MILTON KOERNER

~~XXXXXXXXXXXXXXXXXXXX~~

BUILDING 9, ROOM ~~XXXX~~ 107

STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

Mr. Wright

Mr. Coburn

Mr. Leisner

(518) 457-3336

DATED: Albany, New York
October 9, 1975

Towne & Country Beverage Distr., Inc.
440 Broadway
Menands, New York 12204

Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1138 & 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

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

On the Matter of the Application :
of :
TOWNE & COUNTRY BEVERAGE DISTR., INC. :
for Revision of a Determination or for : DETERMINATION
Refund of Sales and Use Taxes under :
Articles 28 and 29 of the Tax Law for :
the Periods August 1, 1965 to August 31, :
1968. :

Applicant, Towne & Country Beverage Distr., Inc., 440 Broadway, Menands, New York 12204, has filed an application for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the periods August 1, 1965 to August 31, 1968.

The applicant, Towne & Country Beverage Distr., Inc., waived a formal hearing on December 5, 1974. The case was submitted for decision on information contained in the file.

ISSUE

Was additional sales tax due from applicant, Towne & Country Beverage Distr., Inc., for the periods August 1, 1965 to August 31, 1968?

FINDINGS OF FACT

1. Applicant, Towne & Country Beverage Distr., Inc., filed New York State and local sales and use tax returns for the periods August 1, 1965 to August 31, 1968.

2. On December 12, 1968, as a result of a field audit, the Sales Tax Bureau issued a Notice of Determination and Demand against applicant, Towne & Country Beverage Distr., Inc., for additional sales tax due for the periods August 1, 1965 to August 31, 1968, in the sum of \$2,274.34 plus penalty and/or interest of \$422.52.

3. Applicant, Towne & Country Beverage Distr., Inc., is a distributor of soft drinks in bottles. The company is directly affiliated with the Pepsi Cola, Albany Co. and deals exclusively with that company. The completed product is picked up at the bottling plant and is then delivered to local merchants for resale to the eventual consumer.

4. Applicant, Towne & Country Beverage Distr., Inc., makes no sales of a taxable nature to stores, etc. They deliver soft drinks to local merchants at a wholesale price. No tax is due from this.

5. Applicant, Towne & Country Beverage Distr., Inc., also makes sales of individual bottles through company-owned machines.

6. The effective tax rate applicable to applicant, Towne & Country Beverage Distr., Inc., sales of beverages was 2% during the periods August 1, 1965 through August 31, 1968.

7. Applicant, Towne & Country Beverage Distr., Inc., filed returns showing sales subject to New York State and local sales and use tax for the periods August 1, 1965 to August 31, 1968 as follows:

<u>Period Ended</u>	<u>Amount of Sales</u>	<u>Sales Tax Due</u>
8/31/65	\$ -0-	\$ -0-
11/30/65	669.00	13.39
2/28/66	-0-	-0-
5/31/66	-0-	-0-
8/31/66	606.00	12.12
5/31/67	1,189.10	23.79
5/31/68	980.00	39.20

8. The audit determined that the amount of additional sales tax due from applicant, Towne & Country Beverage Distr., Inc., was \$2,274.34 for the periods August 1, 1965 to August 31, 1968.

9. It is the contention of applicant, Towne & Country Beverage Distr., Inc., that soft drinks are a food item and should be exempt.

10. The determination of additional taxable sales and sales tax for the period August 1, 1965 to August 31, 1968, were based upon substantial findings of fact in the course of a field audit of applicant, Towne & Country Beverage Distr., Inc.'s books and records. The Sales Tax Bureau, in arriving at its determination, followed generally accepted procedures and adequate tests consistent with the nature of its business operations and available records. Applicant, Towne & Country Beverage Distr., Inc., has failed to submit documentary or other sufficient evidence to disprove the Sales Tax Bureau's determination of taxable sales or the computation of sales tax due.

CONCLUSIONS OF LAW

A. Soda is a vending machine item subject to New York State and local sales and use tax according to the meaning and intent of sections 1105(d)(i) and 1115(a)(1) of the Tax Law.

B. That the examination of applicant's books and records by the Sales Tax Bureau was properly conducted and the resulting findings as to the amount of additional sales tax due for the periods August 1, 1965 through August 31, 1968, were supported by substantial evidence and were in accordance with the meaning and intent of section 1105 of the Tax Law.

C. That the application is denied and the determination of the deficiency in sales and use tax is sustained.

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

DATED: Albany, New York
October 9, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER