

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SERVOMATION KO-ED, 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)~~ Periods 9/1/68-
8/31/71.

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 6th day of January, 1976, she served the within

Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon SERVOMATION KO-ED, INC.

~~(representative of)~~ the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Servomation Ko-Ed, Inc.
c/o D. Ray Brackett, Director of Taxes
Servomation Corporation
777 3rd Avenue
New York, New York 10017

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

6th day of January, 1976.

Janet M. [Signature]

Mary Groff

STATE OF NEW YORK

Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12227

Not Approved

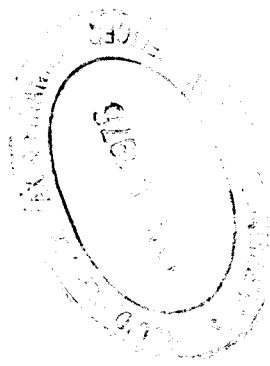
Att:

✓

S. Robert Jensen

Bldg #9

~~Servomation Ko-Ed, Inc.
Long Island Expressway
Jericho, New York 11753~~



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SERVOMATION OF WESTERN NEW YORK, INC.
SERVOMATION OF NORTHEASTERN NEW YORK, INC.
SERVOMATION KO-ED, INC. :

AFFIDAVIT OF MAILING
OF NOTICE OF ~~DISCONTINUATION~~ DETERMINATION
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 ~~XXXXX~~ Periods :
September 1, 1968 through August 31, 1971.

State of New York
County of Albany

JANET MACK , 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 December , 1975, she served the within
Notice of ~~XXXXXXXXXX~~ Determination) by ~~XXXXXXXXXX~~ mail upon SERVOMATION OF
WESTERN NEW YORK, INC. ~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Servomation of Western New York, Inc.
100 Exolon Drive
Tonawanda, New York 14150
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 ~~XXXXXXXXXXXXXXXXXXXX~~
~~XX~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

15th day of December , 19 75

Mary Groff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SERVOMATION OF WESTERN NEW YORK, INC.
SERVOMATION OF NORTHEASTERN NEW YORK, INC.
SERVOMATION KO-ED, INC.
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 ~~XXXXXX~~ Periods
September 1, 1968 through August 31, 1971.

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

State of New York
County of Albany

JANET MACK, 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 December, 1975, she served the within
Notice of ~~DETERMINATION~~ (Determination) by ~~REGISTERED~~ mail upon SERVOMATION OF
NORTHEASTERN NEW YORK, INC., ~~XXXXXXXXXX~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Servomation of Northeastern New York, Inc.
Harvey Pord, Officer
Route 9
Saratoga, 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 ~~XXXXXXXXXX~~
~~XXX~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~XXXXXXXXXX~~ petitioner.

Sworn to before me this

15th day of December, 1975

Mary Droff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SERVOMATION OF WESTERN NEW YORK, INC.
SERVOMATION OF NORTHEASTERN NEW YORK, INC.
SERVOMATION KO-ED, INC.

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 ~~XXXXXX~~ Periods
September 1, 1968 through August 31, 1971.

AFFIDAVIT OF MAILING
OF NOTICE OF ~~REOPENING~~ DETERMINATION
BY ~~XXXXXX~~ MAIL

State of New York
County of Albany

JANET MACK, 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 December, 1975, she served the within
Notice of ~~XXXXXX~~ Determination) by ~~XXXXXX~~ mail upon SERVOMATION
KO-ED, INC. ~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Servomation Ko-Ed, Inc.
Long Island Expressway
Jericho, New York 11753

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 ~~XXXXXXXXXXXX~~
~~XXX~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~XXXXXXXXXXXX~~ petitioner.

Sworn to before me this

15th day of December, 1975.

Mary Shaff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SERVOMATION OF WESTERN NEW YORK, INC.
SERVOMATION OF NORTHEASTERN NEW YORK, INC.

SERVOMATION KO-ED, INC.

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 ~~XXXXXX~~ Periods
September 1, 1968 through August 31, 1971.

AFFIDAVIT OF MAILING
OF NOTICE OF ~~XXXXXX~~ DETERMINATION
BY ~~XXXXXX~~ MAIL

State of New York
County of Albany

JANET MACK, 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 December, 1975, she served the within
Notice of ~~XXXXXXXXXX~~ Determination) by ~~XXXXXXXXXX~~ mail upon D. RAY BRACKETT,
DIRECTOR OF TAXES (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: D. Ray Brackett, Director of Taxes
Servomation Corporation
777 Third Avenue
New York, New York 10017
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 December, 1975.

Mary [Signature]

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

DATED: Albany, New York
December 15, 1975

XXXXXXXXXX
(518)457-3850

Servomation of Western New York, Inc.
100 Exelon Drive
Tonawanda, New York 14150

Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1138 and 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
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

~~XXXXXXXX~~
(518) 457-3850

DATED: Albany, New York
December 15, 1975

Servomation of Northeastern New York, Inc.
Harvey Ford, Officer
Route 9
Saratoga, New York

Dear Mr. Ford:

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

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

AD-1.12 (8/73)



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

DATED: Albany, New York
December 15, 1975

~~XXXXXXXX~~
(518)457-3850

Servomation Ko-Ed, Inc.
Long Island Expressway
Jericho, New York 11753

Gentlemen:

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

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

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
SERVOMATION OF WESTERN NEW YORK, INC.	:	
SERVOMATION OF NORTHEASTERN NEW YORK, INC.	:	DETERMINATION
SERVOMATION KO-ED, INC.	:	
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 Periods September 1, 1968 through	:	
August 31, 1971.	:	

Applicant, Servomation of Western New York, Inc., 100 Exolon Drive, Tonawanda, New York 14150, 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 periods September 1, 1968 through August 31, 1971.

A formal hearing was held at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on November 13, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by D. Ray Brackett, Director of Taxes, Servomation Corporation, and the Sales Tax Bureau was represented by

Saul Heckelman, Esq. appearing by James Scott, Esq. of counsel. The cases of Servomation of Northeastern New York, Inc. and Servomation Ko-Ed, Inc. were also called; the jurisdictional papers were received in evidence and it was stipulated that those cases will abide the ultimate outcome of Servomation of Western New York, Inc.

ISSUES

I. Are hot and cold drink mixing and vending machines subject to sales and use taxes?

II. Are paper cups and containers for coffee, cold drinks and soup purchased by Servomation subject to a sales and use tax?

FINDINGS OF FACT

1. The taxpayer, Servomation of Western New York, Inc. timely filed New York State sales and use tax returns for the period September 1, 1968.

2. A Notice of Determination of sales and use taxes (and penalties) for the periods September 1, 1968 through August 31, 1971, was issued on June 27, 1972 against Servomation of Western New York, Inc. under Notice No. 16-0842436.

3. The taxpayer, Servomation of Western New York, Inc. applied for a revision of the determination of the deficiencies in sales tax. In the cases of Servomation of Northeastern New York, Inc. and

Servomation Ko-Ed, Inc., the jurisdictional papers were received in evidence and it was stipulated that those cases will abide the ultimate outcome of Servomation of Western New York, Inc.

4. The taxpayer, Servomation of Western New York, Inc. was engaged in the use of mixing vending machines for coffee and other hot drinks, or which were for cold or iced soft drinks and colas. The controversy here in question involves (1) sales and use tax on the purchase of vending machines which were purchased in or out of the state and used in Western New York in the taxpayer's business, (2) whether purchases of paper cups, plates and containers for hot and cold drinks and foods were subject to sales tax or exempt because they were part of the food and drink sold.

5. The parties agreed that various items such as plastic stirrers, paper napkins, etc. do not become part of the product sold and stipulated that such items are taxable.

6. Taxpayer claimed that the mix-vending machines were not subject to tax because they were machines used directly and exclusively in the manufacturing, processing and assembling of ingredients to produce the final personal property.

There are many different mix-vending machines but a description of a coffee machine is a principal example.

When a customer deposited a coin in a coffee machine, a series of electronic relays would be activated and fractional power would drop the cup and drop the ground coffee into a brewing mechanism. At that point, hot water would be forced under pressure into the brewing mechanism and hence it would brew the coffee. At that point, the customer would determine if he wanted cream or sugar and make said determination through a series of selection knobs on the face of the machine.

The carbonated drink machines operated in much the same fashion. The customer would deposit his coin and then select the flavor he wanted, if it was to be carbonated or uncarbonated and if he wanted ice or no ice. Through a series of electronic relays, a cup would be dropped and cold water, syrup and carbonated gas would mix to form the product.

7. The coffee cups, beverage cups, plates, etc. were used as containers for the food and passed to the ultimate consumer.

8. The taxpayer reasonably believed that sales and use taxes are not due on either the machines or the paper cups and requested that the penalties be cancelled.

CONCLUSIONS OF LAW

A. Although taxpayer's coin operated mixing and vending machines were used in a type of "processing" of raw materials, they are not used directly and exclusively in the production of tangible personal property. Their primary purpose is to vend and not to produce.

The sales and use taxes of the coffee vending machines are not exempt from sales tax by reason of section 1115(a)(12) of the Tax Law.

Kwik Vend, Inc. v. Kvoutz, 94 Idaho 166, 483 P2d 928, 1971. Canteen Vending Service Co. v. S.T.C., August 21, 1974.

B. The containers, wrappers, and packaging material purchased by the applicant are resold within the meaning of the statute as a physical component part of tangible personal property. The statute broadly defines the term "sale" as "any transfer of title or possession or both, exchange or barter, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration." Section 1101(b)(5). (Emphasis added.) The uncontroverted evidence in the record establishes that a purchaser of the applicant's product takes both title to and possession of the paper container or wrapper in which the product is packaged and is free to remove it from applicant's premises without restriction. Servomation's purchases of containers, wrappers and packaging material were for resale and exempt from tax.

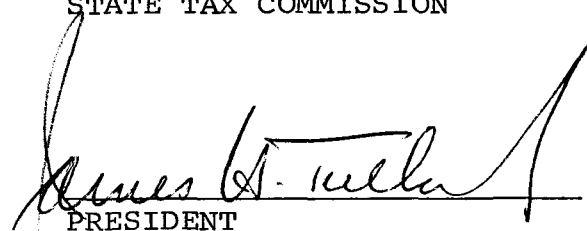
C. The taxpayer acted in good faith and the penalties are cancelled.

D. The deficiency in sales tax as modified herein shall be recomputed in accord with this determination. The deficiency as modified is sustained.

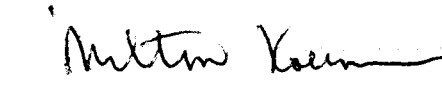
E. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
December 15, 1975

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER

COMMISSIONER