

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID TREPPER

d/b/a TRI-BORO VENDING CO.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Sales and Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~XXXXXX~~ Period(~~s~~)  
December 1, 1969 through November 30, 1972.

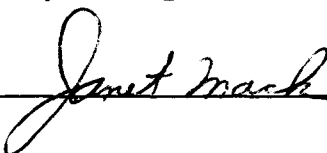
State of New York  
County of Albany

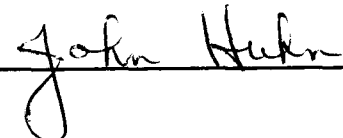
John Huhn, being duly sworn, deposes and says that  
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 29th day of September, 1977, ~~he~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon David Trepper d/b/a  
Tri-Boro Vending Co. ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:  
David Trepper  
d/b/a Tri-Boro Vending Co.  
78-12 223rd Street  
Bayside, New York 11364  
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~  
~~of the~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

29th day of September, 1977.

  
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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
DAVID TREPPER  
d/b/a TRI-BORO VENDING CO.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales and Use :  
Taxes under Article(s) 28 & 29 of the :  
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December 1, 1969 through November 30, 1972.

State of New York  
County of Albany

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age, and that on the 29th day of September , 1977, ~~he~~ served the within  
Notice of Determination by ~~(certified)~~ mail upon David B. Lubash

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: David B. Lubash, Esq.

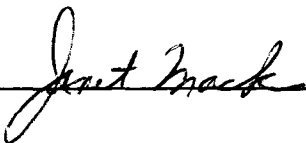
88-18 Sutphin Boulevard  
Jamaica, New York 11435

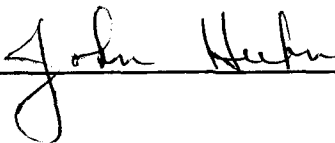
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last known address of the (representative of the) petitioner.

Sworn to before me this

29th day of September , 1977.







STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**September 29, 1977**

**David Trepper  
d/b/a Tri-Boro Vending Co.  
78-12 223rd Street  
Bayside, New York 11364**

**Dear Mr. Trepper:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1130 & 1249** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywaty  
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
DAVID TREPPER	:	
d/b/a TRI-BORO VENDING CO.	:	DETERMINATION
for 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, 1969 through	:	
November 30, 1972.	:	

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Applicant, David Trepper, d/b/a Tri-Boro Vending Co., 78-12 223rd Street, Bayside, New York 11364, 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 period December 1, 1969 through November 30, 1972. (File Nos. 00198 and 00199).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 28, 1977 at 9:15 A.M. Applicant appeared by David Lubash, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq. of counsel).

ISSUES

I. Whether applicant was primarily engaged in making sales of tangible personal property through coin operated vending machines at ten cents or less during the period December 1, 1969 through October 12, 1972.

II. Whether, upon audit of the books and records of applicant, the Sales Tax Bureau properly determined additional sales and use taxes due for the period December 1, 1969 through October 12, 1972.

FINDINGS OF FACT

1. During the period December 1, 1969 through October 12, 1972, applicant was engaged in the sale of tangible personal property through coin operated vending machines. Applicant sold his business on October 12, 1972.

2. On March 20, 1973, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant for tax due in the amount of \$4,778.46, plus penalty and interest, upon the grounds that applicant incorrectly reported nontaxable sales on the quarterly New York State sales and use tax returns filed for the period December 1, 1969 through October 12, 1972.

3. Subsequent to the issuance of the aforesaid Notice of Determination and Demand for Payment of Sales and Use Taxes Due, the Sales Tax Bureau conducted an examination of applicant's books and records for the period December 1, 1969 through October 12, 1972. As a result of said examination, another Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued on May 4, 1973 in the amount of \$458.40, plus penalty and interest.

4. The Sales Tax Bureau arrived at the additional tax due upon the grounds that applicant's gross sales were taxable in total and that all sales were made in New York City.

5. Applicant contended that he was primarily engaged in the sale of tangible property at ten cents or less through coin operated vending machines and, therefore, his gross sales were not taxable in total. He made this contention on the basis of the percentage of units sold and not the percentage of total dollar sales.

6. Applicant also contended that a small percentage of his sales were made in the Nassau County taxing jurisdiction and, therefore, the Sales Tax Bureau improperly assessed his sales as being made in New York City.

7. The examinations conducted by the Sales Tax Bureau indicated that 55.6 percent of applicant's gross sales were from the sale of cigarettes at more than ten cents.

8. Applicant owned sixty-eight vending machines, three of which were located in Nassau County.

CONCLUSIONS OF LAW

A. That applicant was not primarily engaged in the sale of tangible personal property at ten cents or less through coin operated vending machines within the meaning and intent of section 1115(a)(13) of the Tax Law.

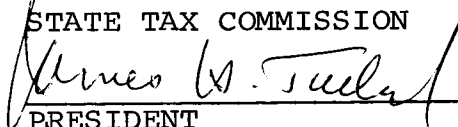
B. That during the audit period, 4.41 percent of applicant's sales were made in Nassau County; therefore, the Sales Tax Bureau is hereby directed to modify the notices of determination and demand for payment of sales and use taxes due issued on March 20, 1973 and May 4, 1973 to reflect sales made in Nassau County.

C. That the application of David Trepper, d/b/a Tri-Boro Vending Co., is granted to the extent of the allocation of sales to Nassau County and is in all other respects denied.

DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER