

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SYRACUSE VENDING CO., INC.

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) :
12/1/69 through 11/30/73.

State of New York
County of Albany

Marsina Donnini, 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 26th day of August, 1977, she served the within
Notice of Determination by ~~(certified)~~ mail upon Philip J. Kramer

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Philip J. Kramer, Esq.
Kramer, Wales & McAvoy
59-61 Court Street
Binghamton, New York

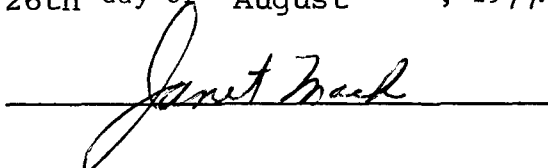
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) 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

26th day of August, 1977.





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12/1/69 through 11/30/73.

State of New York
County of Albany

Marsina Donnini, 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 26th day of August, 1977, she served the within
Notice of Determination by ~~(certified)~~ mail upon William F. Carrigan

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: William F. Carrigan, Esq.
Lowery, Carrigan & Keough
Suite 1509 Mony Plaza
100 Madison Street

Syracuse, New York 13202
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 the) 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

26th day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SYRACUSE VENDING CO., INC.

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) :
12/1/69 through 11/30/73.

State of New York
County of Albany

Marsina Donnini, 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 26th day of August, 1977, she served the within Notice of Determination by ~~(XXXXXX)~~ mail upon Syracuse Vending 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: Syracuse Vending Co., Inc.
7406 Taft Park Drive
North Syracuse, 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 Postal Service within the State of New York.

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

Sworn to before me this

26th day of August, 1977

Marsina Donnini

Just Mack



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

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

August 26, 1977

Syracuse Vending Co., Inc.
7406 Taft Park Drive
North Syracuse, New York

Gentlemen:

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) **1136 & 1243** 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,

Paul B. Coburn
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
SYRACUSE VENDING CO., INC.	:	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 Periods 12/1/69 through 11/30/73.	:	

Syracuse Vending Co., Inc., 116 Picard Drive, Syracuse, New York 13211, 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 December 1, 1969 through November 30, 1973 (File No. 0-001036).

A formal hearing was held at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York 12227, before Solomon Sies, Hearing Officer, on October 5, 1976 at 1:00 p.m.

The applicant appeared by Lowery, Carrigan & Keough. (William F. Carrigan, Esq. of counsel) and Kramer, Wales and McAvoy. (Philip J. Kramer Esq. of counsel). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq. of counsel).

ISSUE

Whether the determination of the Sales Tax Bureau, in imposing additional sales tax by eliminating reported non-taxable sales, was correct.

1. The applicant, Syracuse Vending Co., Inc., filed sales and use tax returns for the periods 12/1/69 through 11/30/73. The applicant executed consents extending the period of limitation for assessment of sales and use taxes to December 20, 1973.

2. On December 18, 1973, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the applicant, Syracuse Vending Co., Inc., and Henry L. Wells individually and as officer for the periods 12/1/69 through 11/30/73 in the amount of \$50,624.18, plus penalty and interest of \$12,845.35, for a total of \$63,469.53. The applicant filed a timely application for a hearing.

3. The Sales Tax Examiner, who did not appear at the formal hearing, arrived at additional taxable sales for the period 12/1/69 through 11/30/70, by taking reported gross sales and subtracting reported non-taxable sales to arrive at additional taxable sales. These sales were then divided by four to arrive at the average for one quarter.

4. Additional tax in the amount of \$2,861.13 was imposed for each of the quarters ending 2/28/70 through 5/31/71. Additional Tax in the amount of \$3,345.74 was imposed for each of the quarters ending 8/31/71 through 11/30/73, with full penalties and interest at the rate of 1% per month.

5. The Notice of Determination was based upon the failure of the applicant to submit books and records. The Sales Tax Bureau accepted the gross sales reported by the applicant on the sales tax returns filed for the tax periods in issue.

6. Mr. Wells for Syracuse Vending Co., Inc., claimed that he had difficulty with his former accountant who refused to surrender the books and records. When he was finally able to get the books and records, Mr. Wells retained another accountant who helped with the preparation of the delinquent sales tax returns. Mr. Wells testified that the returns, as reported, were correct. He also testified that the non-taxable sales consisted of receipts from ice cream, pastries, crackers, juke boxes and games.

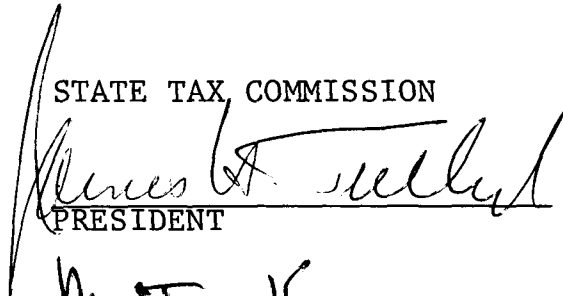
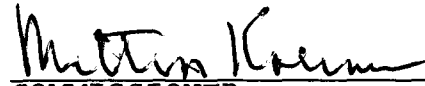
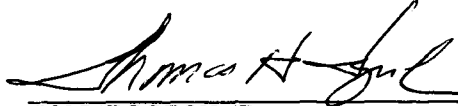
7. The Sales Tax Bureau failed to explain the reason for the exclusion of non-taxable sales, and failed to submit any evidence which would warrant a finding that additional sales taxes were due from the applicant.

CONCLUSIONS OF LAW

A. That the Notice of Determination and the projected computation of additional taxable sales are erroneous and incorrect.

B. That the application of Syracuse Vending Co., Inc. is hereby granted, and the Notice of Determination be and the same is hereby cancelled in full.

DATED: Albany, New York
August 26, 1977

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER