

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MARK H. PATTERSON d/b/a	:	DETERMINATION
CANTEEN OF NORTHERN NEW YORK	:	
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 June 1, 1972 to May 31, 1975.	:	

Applicant, Mark H. Patterson, d/b/a Canteen of Northern New York, Box 272, Carthage, New York 13619, 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 June 1, 1972 to May 31, 1975. (File No. 11080)

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on May 19, 1976 at 9:15 a.m. Applicant appeared by Hugh A. Gilbert, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

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 in issue.

FINDINGS OF FACT

1. On September 19, 1975, as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant, Mark H. Patterson, d/b/a Canteen of Northern New York, in the amount of \$27,414.38, plus penalty and interest of \$10,462.83, for a total of \$37,877.21.

2. In 1966, applicant, Mark H. Patterson, commenced a coin operated vending machine enterprise with capital of seven thousand dollars (\$7,000.00) in Carthage, New York, and he operated in Oswego, Franklin, Jefferson, Lewis and St. Lawrence Counties. He filed a Certificate of Conducting Business as The Canteen of Northern New York. His wife, Dorothy V. Patterson, with no capital assets, filed a Certificate of Conducting Business of "Norcanco". The office for both was in their residence. They used the same vehicles, office machines and personnel. The approximately 375 vending machines of Canteen of Northern New York were used for items such as coffee, candy, soft drinks

and ice cream, all costing ten cents or less. The approximately 125 vending machines of Norcanco were used for sandwiches, doughnuts, hot foods, cigarettes, and drinks costing more than ten cents, and thus were taxable.

3. Applicant, Mark H. Patterson, rented all five hundred vending machines as Canteen of Northern New York. His drivers would load trucks owned by Mark H. Patterson each day with whatever food, drinks and cigarettes were needed for their routes which covered large geographic areas. Drivers would return with the daily receipts which would be counted in the office, and then deposited in the account of Canteen of Northern New York. Separate books and checking accounts were kept, and separate sales tax returns were filed until June of 1974, when prices of all items had risen to over ten cents. Canteen of Northern New York covered all employees with social security.

4. Applicant, Mark H. Patterson, had the advice of an accountant and cooperated with the Sales Tax Bureau.

CONCLUSIONS OF LAW

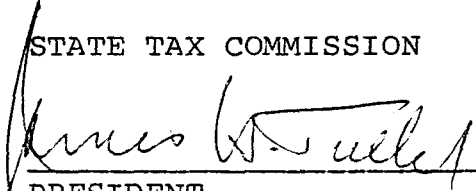
A. That applicant, Mark H. Patterson, d/b/a Canteen of Northern New York and Norcanco, must be considered to be a single vendor during the period in issue, since the enterprises were, in fact, operated as a single entity under the same ownership.

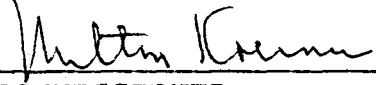
B. That applicant, Mark H. Patterson, d/b/a Canteen of Northern New York and Norcanco, when considered as a single vendor, was not primarily engaged in making sales of tangible personal property through coin operated vending machines at ten cents or less, in accordance with the meaning and intent of section 1115(a)(13) of the Tax Law. Therefore, the Sales Tax Bureau properly imposed sales tax on personal property sold for ten cents or less per item during said period.

C. That the application of Mark H. Patterson, d/b/a Canteen of Northern New York is granted to the extent that the interest in excess of the minimum interest and the penalty imposed pursuant to section 1145(a) of the Tax Law are waived; that the Sales Tax Bureau is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 15, 1975; and that except as so granted, the application is in all other respects denied.

DATED: Albany, New York
June 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER