

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

WAVCO, INC.

LEO KATZ, DAVID R. W. KATZ, WILLIAM KATZ,;
JOSEPH M. DENZAK, and DAVID KATZ,
Individually and as Officers

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~Year(s)~~ Period(s) :
August 31, 1971 to May 31, 1974.

State of New York
County of Albany

Catherine Steele, 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 17th day of September, 1976, she served the within
Notice of Determination by ~~certified~~ mail upon Peter Bellanti, CPA

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Peter Bellanti, CPA
Fiddler and Company
1895 Sheridan Drive
Buffalo, New York 14223

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

17th day of September, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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of

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Catherine Steele

, 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 17th day of September, 1976, she served the within

Notice of Determination by ~~certified~~ mail upon Wavco, Inc., Leo Katz,
David Katz, Individually David R. W. Katz, William
and as Officers ~~(representative of the)~~ Katz, Joseph M. Denzak &

the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Wavco, Inc.

as follows: Leo Katz, David R. W. Katz, William Katz, Joseph M. Denzak
and David Katz, Individually and as Officers

1276 Military Road
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 Postal Service within the State of New York.

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

17th day of September, 1976

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

September 17, 1976

TELEPHONE: (518) **457-3850**

Wavco, Inc.

Leo Katz, David R. W. Katz, William Katz, Joseph M. Denzak
and David Katz, Individually and as Officers
1276 Military Road
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 & 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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Ceburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
WAVCO, INC.	:	
LEO KATZ, DAVID R. W. KATZ, WILLIAM KATZ,	:	DETERMINATION
JOSEPH M. DENZAK, and DAVID KATZ,	:	
Individually and as Officers	:	
	:	
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 August 31, 1971 to May 31, 1974.	:	
	:	

Applicants, Wavco, Inc., Leo Katz, David R. W. Katz, William Katz, Joseph M. Denzak and David Katz, 1276 Military Road, Tonawanda, New York 14150, have 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 August 31, 1971 to May 31, 1974. (File No. 00513). A formal hearing was held before Julius E. Braun, Esq., Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on June 7, 1976, at 1:30 P.M. Applicants appeared by Peter Bellanti, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether paper cups, popcorn cups, hot dog boats and similar paper products purchased by Wavco, Inc. are subject to sales and use taxes.

FINDINGS OF FACT

1. Applicant, Wavco, Inc., timely filed New York State and local sales and use tax returns for the period in issue, August 31, 1971 to May 31, 1974.

2. On December 10, 1974, as a 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, Wavco, Inc. for the period August 31, 1971 to May 31, 1974 in the amount of \$6,577.57 plus penalty and interest of \$1,718.40 for a total sum of \$8,395.97. Also on December 10, 1974, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicants, Leo Katz, David R. W. Katz, William Katz, Joseph M. Denzak, individually and as officers of Wavco, Inc. for the period August 31, 1971 to May 31, 1974 in the amount of \$6,577.57 plus penalty and interest of \$1,718.40 for a total sum of \$8,395.97.

3. Applicant, Wavco, Inc. was a food concessioner operating in various theaters, both indoor and outdoors, discount stores and two small restaurants offering fast food items to the public. Paper

containers were used to serve hot dogs and hamburgers. Drinks and popcorn were served in paper cups to the ultimate consumer. A small percentage of the paper products were also used in the vending machines business offering the same items as their food bars.

4. Applicants, Leo Katz, David R. W. Katz, William Katz, Joseph Denzak and David Katz, were responsible officers of applicant, Wavco, Inc.

CONCLUSIONS OF LAW

A. That the transaction wherein the applicant, Wavco, Inc. sold foodstuffs within various types of paper containers was a sale within the meaning and intent of sections 1101(b)(4)(i) and 1101(b)(5) of the Tax Law. The customers of applicant's products took both title to and possession of the paper containers in which the food product was packaged.

B. That the various paper cups and hot dog boats purchased by applicant, Wavco, Inc., were resold as a physical component part of tangible personal property within the meaning and intent of section 1101(b)(4) of the Tax Law and, therefore the purchase thereof by applicant, Wavco, Inc. was exempt from sales and use taxes.

Petitions of Servomation of Western New York, Inc., etal. S.T.C.

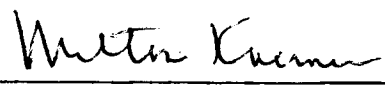
December 15, 1975.

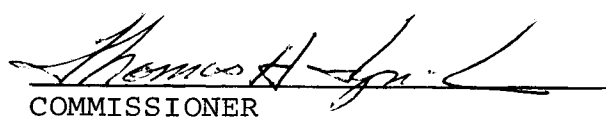
C. That the applications of Wavco, Inc., Leo Katz, David R. W. Katz, William Katz, Joseph M. Denzak and David Katz, are granted and the notices of determination and demand for payment of sales and use taxes due issued on December 10, 1974, are cancelled.

DATED: Albany, New York
September 17, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER