

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Storytown U.S.A., Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
under Article 28 of the Tax Law  
for the Years 1970-1973. :

State of New York  
County of Albany

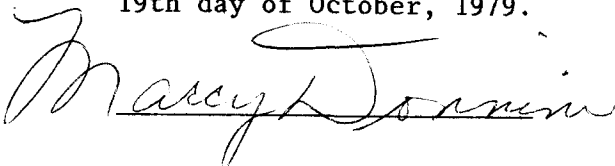
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Determination by mail upon Storytown U.S.A., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

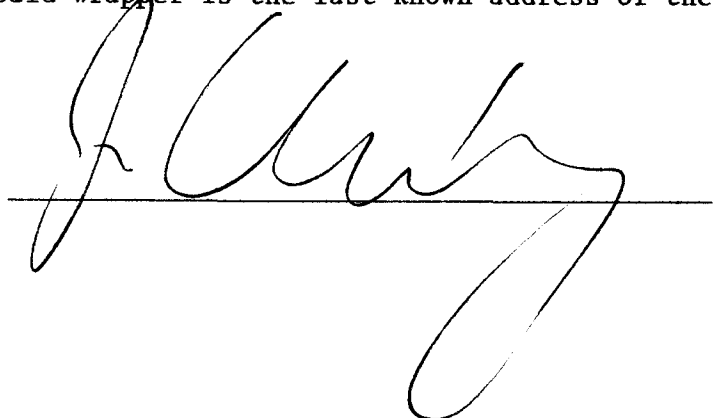
Storytown U.S.A., Inc.  
Box 511  
Lake George, NY 12845

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

Sworn to before me this  
19th day of October, 1979.

  
Marcy L. Dornin

  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Storytown U.S.A., Inc. :

AFFIDAVIT OF MAILING

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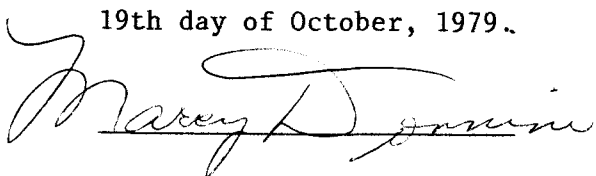
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Determination by mail upon Francis T. Roach the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

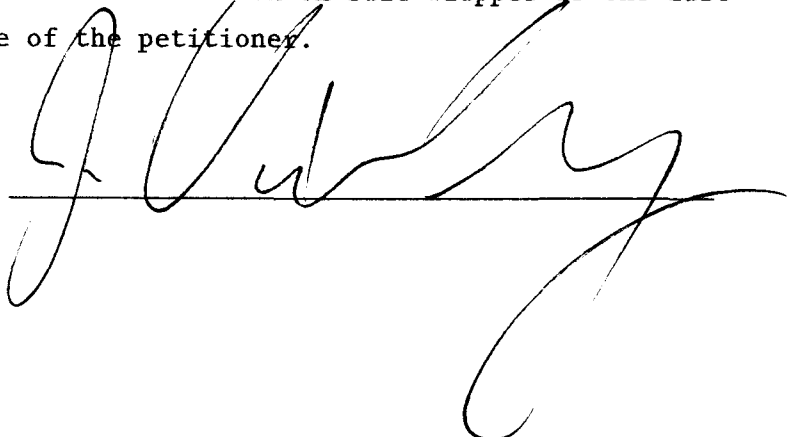
Mr. Francis T. Roach  
50 Colvin Ave.  
Albany, NY 12206

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  
19th day of October, 1979.

  
Nancy D. Quinn



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

October 19, 1979

Storytown U.S.A., Inc.  
Box 511  
Lake George, NY 12845

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) 1138 & 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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Francis T. Roach  
50 Colvin Ave.  
Albany, NY 12206  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
STORYTOWN U S A, 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 Period May 1, 1970 through August :  
31, 1973. :

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Applicant, Storytown U S A, Inc., Box 511, Lake George, New York 12845, 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 May 1, 1970 through August 31, 1973 (File No. 00589).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Bldg. #9, State Campus, Albany, New York, on May 12, 1976 at 9:15 A.M. Applicant appeared by Francis T. Roach, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether applicant is liable for New York State sales and use taxes on the purchase of paper cups in which various beverages and popcorn were dispensed by said applicant.

II. Whether applicant is liable for New York State sales and use taxes on the purchase of brochures, bumper stickers and bumper strip wire passed out to customers.

III. Whether the consent extending the period of limitation for assessment of sales and use taxes was valid.

FINDINGS OF FACT

1. On June 20, 1974 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, Storytown U S A, Inc., for taxes due of \$10,960.70, plus penalty and interest of \$3,580.39, for a total of \$14,541.09. On September 10, 1975, the Sales Tax Bureau issued a Notice of Assessment Review to reflect an adjusted tax due of \$9,693.70 and a payment of \$7,188.38 on the assessment. The amount now at issue is \$2,505.32 in tax, plus penalty and interest.

2. Applicant, Storytown U S A, Inc., operates an amusement park in Lake George, New York, with a variety of rides, shows and other attractions. Access to and permission to use all of applicant's facilities is obtained by the payment of a single admission charge by the customer. Customers are given a brochure that pictures, describes and maps applicant's facilities. No separate charge is made by applicant for the brochure. Applicant did not pay a sales or use tax on the purchase of said brochures.

3. Applicant places a bumper sticker, with applicant's name thereon, on a customer's vehicle in the parking lot. Bumper strip wire is used to affix the stickers to the vehicles. No separate charge is made by applicant for the stickers or wire. Applicant did not pay a sales or use tax on the purchase of the stickers or wire.

4. Applicant, Storytown U S A, Inc., dispenses beverages (such as soda and beer) and popcorn in paper cups to its customers in its food operations. No separate charge was made for the paper

cups which were transferred to the customer with the purchase of beverages and popcorn. Applicant did not pay a sales or use tax on the purchase of paper cups.

5. That portion of the Sales Tax Bureau's assessment which is at issue here was based on applicant's purchase of brochures, bumper stickers and bumper strip wire, and paper cups. Applicant contended that the brochures, bumper stickers and bumper strip wire were purchased for resale in that the price of said items was included in the admission charge. Applicant also contended that the paper cups were purchased for resale with the beverages and popcorn.

6. The consent extending the period of limitation for assessment of sales and use taxes was signed by Rex Billings, who was a vice-president and a manager of applicant.

7. Applicant, Storytown U S A, Inc., cooperated with the Sales Tax Bureau and acted in good faith.

#### CONCLUSIONS OF LAW

A. That the paper cups purchased by applicant, Storytown U S A, Inc., were not purchased for resale as a physical component part of tangible personal property, within the meaning and intent of section 1101(b)(4)(i) of the Tax Law. Accordingly, the purchases thereof by applicant were not exempt from sales and use taxes. Said subsection provides, in pertinent part, that the term "retail sale" means the sale of tangible personal property for any purpose other than "... (A) for resale as such or as a physical component part of tangible personal property...". Applicant's customers did not purchase the

paper cups "as such," but received said items only as an incident to the purchase of food and drink. No separate consideration was paid for the paper cups and they were not reusable. Thus, the paper cups were used or consumed by Storytown U S A, Inc. when it served food or drink. Matter of Burger King, Inc., Decision of the State Tax Commission, dated December 7, 1977.

B. That the brochures, bumper stickers, and bumper strip wire distributed, without charge, by applicant, Storytown U S A, Inc., to its customers were not purchased for resale as a physical component part of tangible personal property, within the meaning and intent of section 1101(b)(4)(i) of the Tax Law; therefore, the purchase of said items by applicant was not exempt from the sales or use tax (see Conclusion of Law "A" above). Applicant's customers did not purchase the brochures, bumper stickers or bumper strip wire, but received said items only as an incident to the payment of the admission charge. No separate consideration was paid for said items, and said items were not reusable.

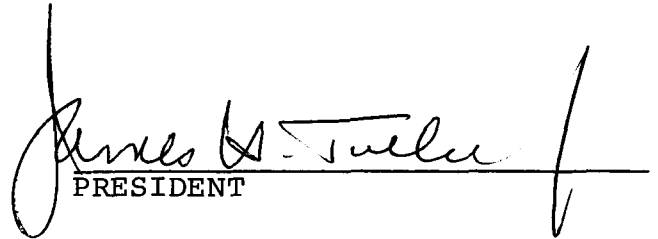
C. That the consent extending the period of limitation for the assessment of sales and use taxes was valid, since it was signed by an officer of applicant who had apparent authority to do so.

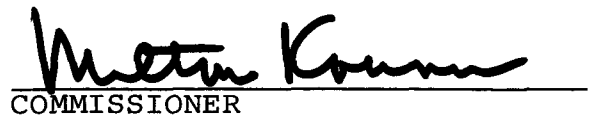
D. That the application of Storytown U S A, Inc. is granted to the extent that the penalty and interest in excess of the minimum statutory rate are cancelled. The Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 20, 1974 and adjusted on September 10, 1975 and that, except as so granted, the application is in all other respects denied.

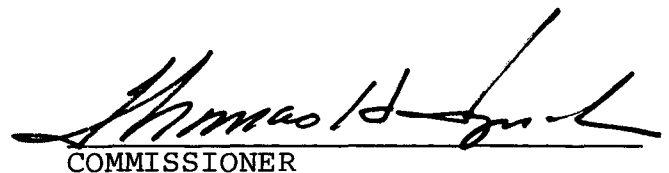
DATED: Albany, New York

STATE TAX COMMISSION

OCT 19 1979

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER