

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jardso Vending Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Years 6/1/71 - 5/31/74. :

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 26th day of December, 1979, he served the within notice of Determination by mail upon Jardso Vending Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jardso Vending Corp.

6 Rewe St.

Brooklyn, NY 11211

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
26th day of December, 1979.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jardso Vending Corp. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Sales & Use Tax :
under Article 28 & 29 of the Tax Law :
for the Years 6/1/71 - 5/31/74. :

AFFIDAVIT OF MAILING

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 26th day of December, 1979, he served the within notice of Determination by mail upon Emanuel Kuflik 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. Emanuel Kuflik
75 Maiden Ln.
New York, NY 10038

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 December, 1979.

Joanne Knapp

J. J. Vredenburg

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

December 26, 1980

Jardso Vending Corp.
6 Rewe St.
Brooklyn, NY 11211

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
Emanuel Kuflik
75 Maiden Ln.
New York, NY 10038
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

JARDSO VENDING CORP. : 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 Ended June 1, 1971 to :
May 31, 1974. :

Applicant, Jardso Vending Corp., 6 Rewe Street, Brooklyn, New York 11211, 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 ended June 1, 1971 to May 31, 1974 (File No. 12899).

A formal hearing was held before Frank A. Romano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 23, 1977 at 1:15 P.M. Applicant appeared by Emanuel Kuflik, Accountant. The Sales Tax Bureau appeared by Peter J. Crotty, Esq., (James J. Morris, Jr., Esq., of counsel).

ISSUE

Whether applicant, Jardso Vending Corp., is liable for additional sales taxes assessed pursuant to audit for the periods ended June 1, 1971 to May 31, 1974.

FINDINGS OF FACT

1. Applicant, Jardso Vending Corp., timely filed New York State and local sales and use tax returns for the periods ended June 1, 1971 to May 31, 1974 and remitted sales tax in the amounts reflected thereon.

2. On January 23, 1976, a Notice of Determination and Demand for Payment of Sales and Use Taxes Due was issued to said applicant for \$114,831.96 in sales taxes, plus \$51,744.71 in penalties and interest, making a total of \$166,576.67 due and owing for the aforesaid periods.

3. The aforesaid Notice of Determination was also issued to Ann Rosenberg, Stanley Rosenberg and Ronald Rosenberg, individually and as officers of Jardso Vending Corp., assessing the sum of \$166,576.67, computed as aforesaid, against them on the grounds that, as officers of Jardso Vending Corp., they were persons required to collect sales and use taxes pursuant to Section 1131(1) of the Tax Law and were personally liable for such additional taxes assessed against said corporation pursuant to Section 1133(a) of the Tax Law.

4. On or about March 5, 1976, applicant, Jardso Vending Corp., filed an application for revision of the aforesaid determination and requested a hearing to review such determination pursuant to Section 1138 of the Tax Law.

5. Ann Rosenberg, Stanley Rosenberg and Ronald Rosenberg did not file an application or petition to revise and review the aforesaid determination and, accordingly, the issue of their personal liability for additional sales taxes assessed against applicant, Jardso Vending Corp., pursuant to Sections 1131(1) and 1133(a) of the Tax Law is not at issue in the instant proceeding.

6. For the periods in question, applicant, Jardso Vending Corp., a New York corporation, was an operator of vending machines and maintained its principal place of business at 6 Rewe Street, Brooklyn, New York. Said applicant's officers were, as follows: Ann Rosenberg, President; Stanley Rosenberg, Treasurer; and Ronald Rosenberg, Secretary.

7. The auditor for the Sales Tax Bureau visited applicant's place of business and examined applicant's general ledger, Federal income tax returns, New York State sales tax returns and purchase invoices. However, there were no work papers available with respect to the preparation of applicant's New York State sales tax return.

8. After comparing the general revenues set forth in applicant's general ledger with applicant's New York State sales tax and Federal income tax returns, the auditor determined that a deficiency existed. The amount of the deficiency was added to the amount claimed as gross sales by applicant on the New York State sales tax returns to arrive at applicant's total sales. The auditor then subtracted from the total sales the amounts shown in applicant's general ledger for music and game sales, miscellaneous sales and nontaxable taxes on cigarettes. He also subtracted from the total sales the amount shown in applicant's general ledger for loss due to slugs. No subtraction was made for theft or other losses as applicant did not have any records disclosing such information. After making the aforesaid subtractions, the auditor arrived at the total taxable sales against which he applied the tax rate to arrive at the total tax due. He then subtracted the taxes paid by applicant as shown on the filed New York State tax returns, thereby arriving at the additional sales tax liability for which applicant was assessed.

9. Applicant contended that the audit was improper and inaccurate because the auditor did not allow a more substantial monetary amount for loss due to theft and machine malfunction. In support of this contention, applicant relied on a test period of approximately one month, from April 11, 1977 to May 21, 1977. During the test period, applicant maintained a repair call book to report thefts, shortages and machine malfunction. A repairman would answer the call

for service and, in the course of repair, would check the inventory in the machine against the money it contained. In this way, applicant determined the percentage of loss against actual purchase records for the test period.

10. Applicant's test period is subsequent to the periods in question and does not constitute a fair representation in the face of an audit based on applicant's actual books and records. Applicant concedes that it did not maintain such records before or during the periods in question. Further, at the conclusion of the test period, such records were no longer maintained.

CONCLUSIONS OF LAW

A. That applicant, Jardso Vending Corp., was a vendor as defined in Section 1101(b) (8) of the Tax Law and was subject to the sales tax imposed by Section 1105(a) of the Tax Law.

B. That, pursuant to Section 1138(a) of the Tax Law, additional sales tax was determined from the best available information and such determination was properly supported by field audit procedures and based on substantial findings of fact in the course of such field audit.

C. That applicant, Jardso Vending Corp., failed to maintain adequate and accurate records for the period in question pursuant to Section 1135 of the Tax Law (See also, Form ST-155, Record Keeping Instructions for Sales Tax Vendors, 2 State Tax Reporter, 61,011, pp. 6638-39) and, consequently, exactness will not be required in determining said applicant's sales tax liability, Markowitz v. State Tax Commission, 54 AD 2d 1023, 388 NYS 2d 176 (3rd Dept. 1976).

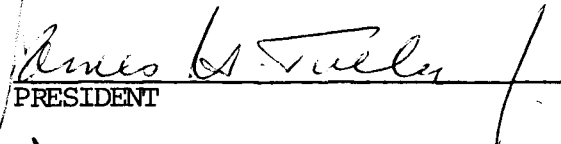
D. That applicant, Jardso Vending Corp., has failed to sustain its burden of disproving the findings of the Sales Tax Bureau that additional sales tax is due and owing.

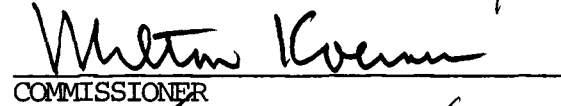
E. That the application of Jardso Vending Corp. is denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on January 23, 1976 is sustained in its entirety.

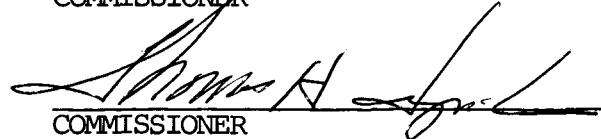
DATED: Albany, New York

DEC 26 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER