

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Syracuse Automatic Candy 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 Period 6/1/72-5/31/75. :

State of New York
County of Albany

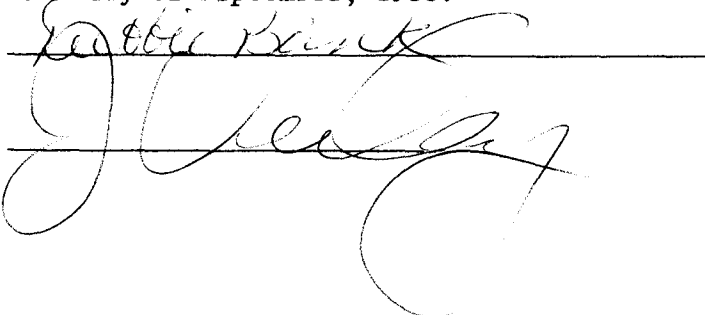
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Determination by mail upon Syracuse Automatic Candy Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Syracuse Automatic Candy Corp.
7406 Taft Park Drive
East Syracuse, NY 13057

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 September, 1980.



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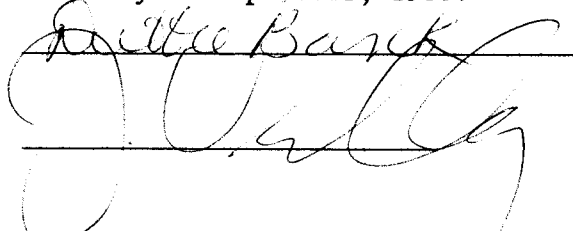
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Determination by mail upon William F. Carrigan the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. William F. Carrigan
Lowery, Carrigan & Koeugh
One Mony Plaza
Syracuse, NY 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
19th day of September, 1980.



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

September 19, 1980

Syracuse Automatic Candy Corp.
7406 Taft Park Drive
East Syracuse, NY 13057

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
William F. Carrigan
Lowery, Carrigan & Koeugh
One Mony Plaza
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
	:	
of	:	
	:	
SYRACUSE AUTOMATIC CANDY 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 Period June 1, 1972 through May 31,	:	
1975.	:	

Applicant, Syracuse Automatic Candy Corp., 7406 Taft Park Drive, East Syracuse, New York 13057, 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 through May 31, 1975 (File No. 10442).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building #9, Albany, New York, on September 21, 1976 at 9:15 A.M. Applicant appeared by Lowery, Carrigan & Keough, Esqs. (William F. Carrigan, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether applicant was primarily engaged in making sales through automatic vending machines at ten cents or less.

II. Whether applicant is liable for use tax imposed on the purchase of vending machines.

FINDINGS OF FACT

1. Applicant's business operations consisted of sales of candy, soft drinks, coffee and hot chocolate through coin-operated vending machines situated in various locations in the Syracuse, Watertown and Ithaca, New York areas.

2. Applicant filed New York State and local sales and use tax returns for the periods June 1, 1972 through May 31, 1973, September 1, 1973 through November 30, 1973 and June 1, 1974 through February 28, 1975, on which no taxable sales were reported. Applicant did not file any sales and use tax returns for the periods June 1, 1973 through August 31, 1973, December 1, 1973 through May 31, 1974 and March 1, 1975 through May 31, 1975.

3. Applicant executed a consent extending the period in which to determine additional taxes due for the period June 1, 1972 through November 30, 1972, to March 20, 1976.

4. As a result of an audit, the Sales Tax Bureau, on October 6, 1975, issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against the applicant in the amount of \$167,974.62, plus penalty and interest of \$53,181.73, for a total due of \$221,156.35.

5. Applicant timely filed an application for a hearing to review the determination.

6. The books and records maintained by the applicant were insufficient to accurately determine the sales tax due.

7. The auditor determined that additional sales tax, in the amount of \$158,536.22, was due because the applicant's sales of food and drink through coin-operated machines amounted to less than 20 percent of its total sales and, therefore, applicant was not primarily engaged in the sale of tangible personal property sold at ten cents or less.

Additionally, the auditor determined a use tax of \$9,438.40 was due for the purchase of vending machines by the applicant. Since no invoices were available, the amounts for the valuation of the vending machines were arrived at from the cancelled checks of the applicant. The largest portion of the vending machines was acquired from Joy Automatics (approximately \$113,000.00).

8. The assessment was computed on a percentage of the applicant's gross sales reported on the sales tax returns filed and an estimate of sales for those quarters where no sales tax return was filed. The records maintained by the applicant consisted of computer sheets of sales by category (candy, soft drinks, coffee and hot chocolate) and segregated by location (Syracuse, Watertown and Ithaca), which were compiled from route tickets for each machine for each location. The route tickets were not complete for all locations in that they did not always show the breakdown of sales, only the weekly sales totals. The gross sales reported on applicant's sales tax returns were based on the computer sheets.

The auditor determined the applicant was selling its products for more than ten cents, based upon a mathematical calculation of the number of units purchased as shown on the purchase invoices that were examined. The auditor did not examine all the invoices for each category of purchases.

9. At the hearing, applicant submitted documentary evidence showing the number of units purchased for sale was greater than the amounts shown on the purchase invoices which the auditor used as his basis for determination. Additionally, the auditor did not make any computations or include the hot chocolate purchases for sale. Based upon the number of units purchased, the mathematical calculations support the applicant's claim that more than 75 percent of its sales were at ten cents.

10. Applicant submitted documentary evidence that the purchaser of the vending machines was Syracuse Vending Company, Inc.

CONCLUSIONS OF LAW

A. That the applicant was primarily engaged in making sales through vending machines at ten cents or less and is entitled to the exemption from

the sales tax in accordance with the provisions of section 1115(a)(13) of the Tax Law.

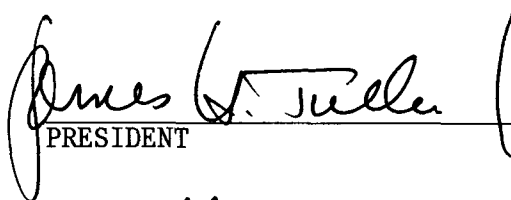
B. That the applicant was not the purchaser of the vending machines and, therefore, is not liable for the use taxes on such vending machines.

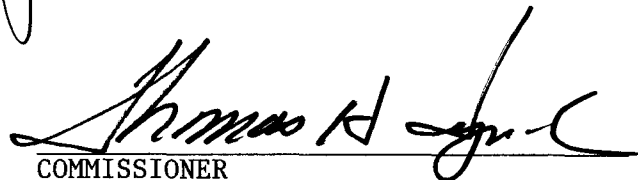
C. That the application of Syracuse Automatic Candy Corp. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 6, 1975 is cancelled.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 19 1980


PRESIDENT


COMMISSIONER


COMMISSIONER