

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Faculty-Student Association of State :
University College at Plattsburgh, 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 & 29 of the Tax Law :
for the Period 6/1/73 - 11/30/76. :

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 20th day of February, 1981, he served the within notice of Decision by mail upon Faculty-Student Association of State, University College at Plattsburgh, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Faculty-Student Association of State
University College at Plattsburgh, Inc.
Broad St., Kehoe Administration Bldg.
Plattsburgh, NY 12901

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
20th day of February, 1981.

Carmie P. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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of :
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University College at Plattsburgh, Inc. :
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AFFIDAVIT OF MAILING

State of New York
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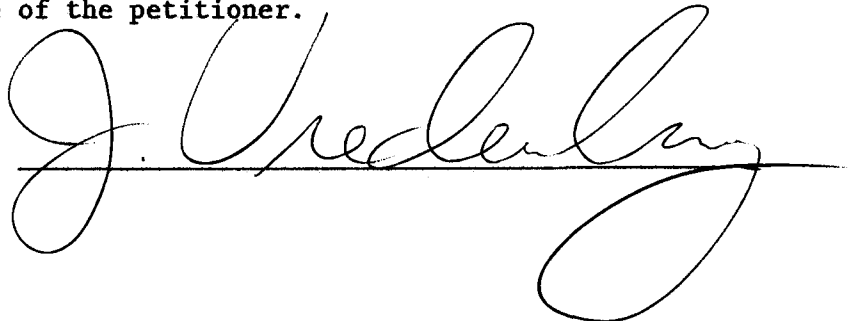
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 20th day of February, 1981, he served the within notice of Decision by mail upon Clyde A. Lewis the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Clyde A. Lewis
Jerry, Lewis, Wylie & Lyon
53 Court St.
Plattsburgh, NY 12901

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
20th day of February, 1981.



A large, stylized handwritten signature, likely of Jay Vredenburg, is written over a horizontal line.

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

February 20, 1981

Faculty-Student Association of State
University College at Plattsburgh, Inc.
Broad St., Kehoe Administration Bldg.
Plattsburgh, NY 12901

Gentlemen:

Please take notice of the Decision 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
Clyde A. Lewis
Jerry, Lewis, Wylie & Lyon
53 Court St.
Plattsburgh, NY 12901
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
FACULTY-STUDENT ASSOCIATION OF STATE	:	DECISION
UNIVERSITY COLLEGE AT PLATTSBURGH, INC.	:	
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, 1973 through November 30,	:	
1976.	:	

Petitioner, Faculty-Student Association of State University College at Plattsburgh, Inc., Kehoe Administration Building, Plattsburgh, New York 12901, filed a petition 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, 1973 through November 30, 1976 (File No. 18821).

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 March 7, 1979 at 1:15 P.M. Petitioner appeared by Jerry, Lewis, Wylie & Lyon, Esqs. (Clyde A. Lewis, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Kathy L. Sanderson, Esq., of counsel).

ISSUE

Whether petitioner was a person required to collect tax on sales made through vending machines operated on the campus of the State University College at Plattsburgh.

FINDINGS OF FACT

1. On March 11, 1977, pursuant to an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Faculty-Student Association of State University College at Plattsburgh, Inc. under the name "F.S.A. of S.U.C. at Plattsburgh, Inc."

Records indicated additional taxable sales for the period in issue in the amount of \$43,694.26, plus penalty and interest in the amount of \$22,326.94, for a total of \$66,021.18. On April 21, 1978, petitioner withdrew and made partial payment on part of the demand in the amount of \$16,680.45, leaving a balance in the amount of \$27,013.81 plus penalty and interest.

2. Petitioner had signed consents extending the period of limitation for assessment of sales and use taxes to March 20, 1977.

3. Petitioner, which is now known as College Auxiliary Services of State University College at Plattsburgh, Inc., is and was a New York not-for-profit corporation. On July 1, 1973, petitioner contracted with Luck's Nor Co. Corp. ("Luck's"), a vending machine operator, under which Luck's was to place machines at specific locations about the campus and to stock said machines. Petitioner was paid a commission of three percent (3%) of sales. Over one hundred vending machines dispensed cigarettes, candy, milk, ice cream, coffee, potato chips, soup, soda, pastry, sandwiches, cookies, fruit and puddings. Luck's contract with petitioner expired June 30, 1975, but was continued on a month-to-month basis. Luck's was eventually replaced by another vendor in July, 1977. Petitioner depended on the vendor's figures for accuracy. Prices of the products were agreed upon. The vendor was given space in the school warehouse where products were stored. There is no dispute upon the audit figures.

4. The contract between petitioner and Luck's spelled out fully the terms between the parties. However, in actuality, Luck's ran the whole business from installation and operation of the machines, supplying products, maintaining inventory records and collecting monies. Petitioner had no idea of the true receipts from the machines and relied on Luck's. Article 1, 2, 11 and 12 of the contract provided:

"Article 1. LUCK'S NOR. CO. CORP. hereby agrees to lease to the ASSOCIATION, and has already installed, as many coin operated vending machines as required to service the students of the STATE UNIVERSITY COLLEGE AT PLATTSBURGH, INC., Plattsburgh, New York, which are now in operation.

LUCK'S NOR. CO. CORP. further agrees to maintain such machines in good operating condition.

* * *

Article 2. It is agreed that LUCK'S NOR. CO. CORP. will install any new equipment as needed with his own labor and materials, but outlets for water and electricity shall be provided by the ASSOCIATION.

* * *

Article 11. All products for vend are to be delivered and checked in to the ASSOCIATION warehouse by the ASSOCIATION'S stock clerk. The ASSOCIATION'S stock clerk will issue daily all products to the vending company. At the end of each week, by means of the daily inventory records plus a physical inventory taken jointly by both parties, a charge will be made to the vending company for 100% of all products charged out during the week at the agreed vend price.

* * *

Article 12. The ASSOCIATION agrees to pay LUCK'S NOR. CO. CORP. for rental of machines and all service to the machines at the rate of 87.6% of all products charged to them by the ASSOCIATION. Exceptions are sandwiches, fruit, and fruit juices, which will be charged at the rate of 95%; music and games will be at the rate of 50%, which will be cashed jointly. It is further understood that the above amounts will be adjusted to cover the cost of all sales taxes incurred to the ASSOCIATION in this operation." (Emphasis supplied)

Luck's contract was not renewed because of the failure to turn over the agreed percentages of sales to petitioner. Luck's is still indebted to petitioner.

CONCLUSIONS OF LAW

A. That section 1101(b)(8)(i)(A) of the Tax Law provides that the term "vendor" includes a "person making sales of tangible personal property or services, the receipts from which are taxed by this article."

B. That section 1101(b)(8)(ii) provides that:

"In addition, when in the opinion of the tax commission it is necessary for the efficient administration of this article to treat any salesman, representative, peddler or canvasser as the agent of the vendor, distributor, supervisor or employer under whom he operates or from whom he obtains tangible personal property sold by him or for whom he solicits business, the tax commission may, in its discretion, treat such agent as the vendor jointly responsible with his principal, distributor, supervisor or employer for the collection and payment over of the tax."

Petitioner was not a vendor nor an agent of a vendor making sales of tangible personal property.

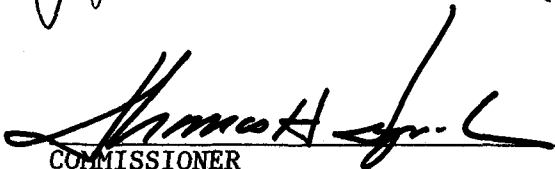
Accordingly, petitioner Faculty-Student Association of State University College at Plattsburgh, Inc. is not responsible for the collection and payment over of the tax.

C. That the petition of Faculty-Student Association of State University College at Plattsburgh, Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 11, 1977, is cancelled.

DATED: Albany, New York
FEB 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER