

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
H. R. T. Vending Co., 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 12/1/72 & 2/29/76. :

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State of New York  
County of Albany

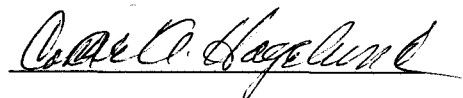
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 10th day of April, 1981, he served the within notice of Decision by mail upon H. R. T. Vending Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

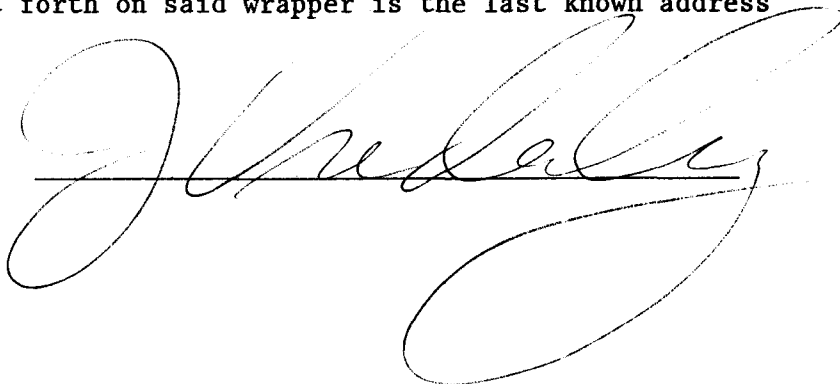
H. R. T. Vending Co., Inc.  
6 Second St.  
P.O. Box 310  
Waterford, NY 12188

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  
10th day of April, 1981.





STATE OF NEW YORK  
STATE TAX COMMISSION

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of :  
H. R. T. Vending Co., Inc. :  
: AFFIDAVIT OF MAILING  
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State of New York  
County of Albany

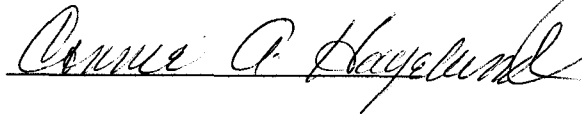
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 10th day of April, 1981, he served the within notice of Decision by mail upon Alexander Sheremata the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

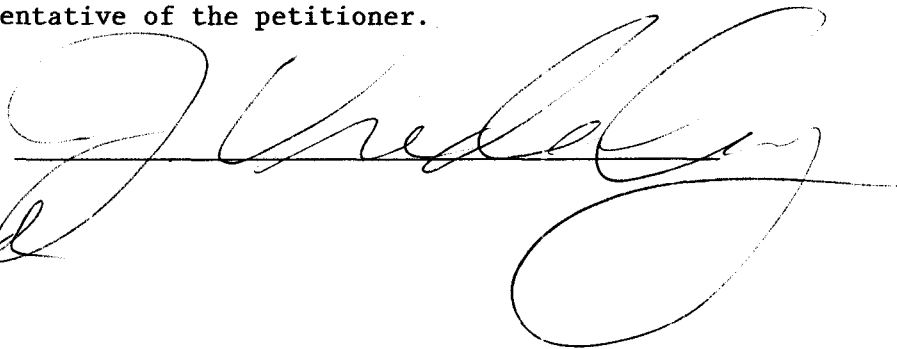
Mr. Alexander Sheremata  
99 Remsen St.  
Cohoes, NY 12047

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  
10th day of April, 1981.

  
Conner P. Hagelund



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

April 10, 1981

H. R. T. Vending Co., Inc.  
6 Second St.  
P.O. Box 310  
Waterford, NY 12188

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  
Alexander Sheremata  
99 Remsen St.  
Cohoes, NY 12047  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
H.R.T. VENDING CO., INC.	:	DECISION
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 December 1,	:	
1972 through February 29, 1976.	:	

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Petitioner, H.R.T. Vending Co., Inc., 6 Second Street, Waterford, New York 12188, 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 December 1, 1972 through February 29, 1976 (File No. 17790).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York on January 9, 1980 at 9:15 A.M. Petitioner appeared by Alexander Sheremeta, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

I. Whether the gross receipts from sales of tangible personal property made by petitioner through vending machines included sales tax thereby resulting in an overstatement of taxable sales on petitioner's sales tax return.

II. Whether the refund claimed for the period December 1, 1972 through August 31, 1973 is barred by the statute of limitations.

FINDINGS OF FACT

1. During the period at issue, the petitioner, H.R.T. Vending Co., Inc., sold candy, cigarettes and beverages through vending machines located in Albany, Rensselaer, Saratoga and Warren Counties.

2. In the preparation of sales tax returns, the petitioner's bookkeeper computed the tax due by multiplying the appropriate state and/or local sales tax rate by the gross receipts from vending machines.

3. On October 7, 1976, the petitioner filed an Application for Credit or Refund of State and Local Sales or Use Tax for the period December 1, 1972 through February 29, 1976 seeking a refund in the amount of \$1,824.78.

It was the petitioner's position that the gross receipts from the vending machines comprised the following: (1) the sales price of the tangible personal property, and (2) the applicable sales tax. Furthermore, the proper method for computing tax due is to divide gross receipts by 100 percent, plus the applicable sales tax rate, and then multiplying the resulting quotient by the applicable sales tax rate.

4. On November 10, 1976, the Audit Division denied the petitioner's refund claim on the basis that no prices were posted on the vending machines; that, therefore, tax was to be computed by applying the appropriate sales tax rate to gross receipts from the vending machines.

5. On January 25, 1977, the petitioner filed an application for a hearing to review the refund denial.

6. Petitioner acknowledged that there was nothing on the vending machines to indicate to the customer the amount of the sales tax or the inclusion of sales tax in the selling price.

#### CONCLUSIONS OF LAW

A. That section 1132(a) of the Tax Law provides, in part, that every person required to collect the tax shall collect the tax from the customer when collecting the price to which it applies.

B. That section 1133(a) of the Tax Law provides, in part, that every person required to collect tax shall be personally liable for the tax. Any such person shall have the same right in respect to collecting the tax from his customer or in respect to nonpayment of the tax by the customer as if the tax were a part of the purchase price.

C. That section 1139(a) of the Tax Law provides, in part, for a refund or credit of tax erroneously, illegally or unconstitutionally paid if application therefor shall be filed within three years after the date when such amount was payable under this article.

D. That the gross receipts of petitioner included both the sales price of the property sold and the sales tax attributable to said property in accordance with section 1132(a) and 1133(a) of the Tax Law.

That the petitioner overstated its taxable sales on its sales tax returns and thereby made an erroneous, illegal or unconstitutional payment of sales tax in accordance with section 1139(a) of the Tax Law.

E. That petitioner's claim for refund for the period December 1, 1972 through August 31, 1973 was not filed within three years after the date when such amount was payable, and is, therefore, barred by the statute of limitations in accordance with section 1139(a) of the Tax Law.

F. That the petition of H.R.T. Vending Co., Inc. is granted except to the extend indicated in Conclusion of Law "E".

DATED: Albany, New York

APR 10 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



New York State Department of  
**TAXATION and FINANCE**  
TAX APPEALS BUREAU

TO *STO* ..... DATE *May 22, 1981*

*Taxpayer's copy returned, no better  
address.*

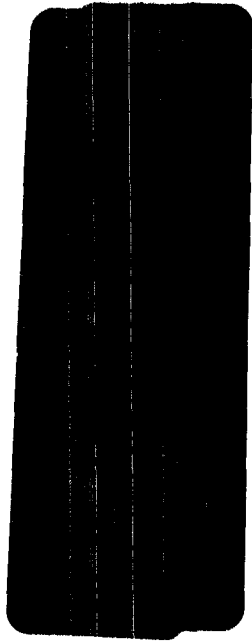
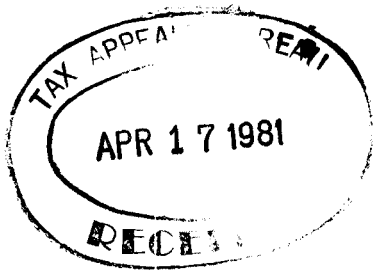
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STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

B/A  
Dew  
B. Address sent  
4-20-81  
DM

2nd request  
5-17-81

H. R. T. Vending Co., Inc.  
6 Second St.  
P.O. Box 310  
Waterford, NY 12188







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

April 10, 1981

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Phone # (518) 457-6240

Very truly yours,

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cc: Petitioner's Representative  
Alexander Sheremata  
99 Remsen St.  
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Taxing Bureau's Representative

STATE OF NEW YORK

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