

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Rich Plan of Utica, Inc. :
and Rich Plan of Syracuse, 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 12/1/74 - 8/31/77. :

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 9th day of January, 1981, he served the within notice of Determination by mail upon Rich Plan of Utica, Inc., and Rich Plan of Syracuse, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Rich Plan of Utica, Inc.
and Rich Plan of Syracuse, Inc.
Truck Rt. 5A
Yorkville, NY 13495
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
9th day of January, 1981.

Conrad A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Rich Plan of Utica, Inc. :
and Rich Plan of Syracuse, Inc. :
for Redetermination of a Deficiency or a Revision :
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Sales & Use Tax :
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AFFIDAVIT OF MAILING

State of New York
County of Albany

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Rich Plan of Utica, Inc.
and Rich Plan of Syracuse, Inc.
168 Packard Bldg.
Mattydale, NY 13211

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
9th day of January, 1981.

Cornie G. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Rich Plan of Utica, Inc. :
and Rich Plan of Syracuse, 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 12/1/74 - 8/31/77. :

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 9th day of January, 1981, he served the within notice of Determination by mail upon Stephen W. Johnson 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. Stephen W. Johnson
Bankers Trust Bldg., Suite 1425
Utica, NY 13501

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
9th day of January, 1981.

Connie A. Haglund

J. Vredenburg

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

January 9, 1981

Rich Plan of Utica, Inc.
and Rich Plan of Syracuse, Inc.
Truck Rt. 5A
Yorkville, NY 13495

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
Stephen Johnson
Bankers Trust Bldg., Suite 1425
Utica, NY 13501
Taxing Bureau's Representative

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

January 9, 1981

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and Rich Plan of Syracuse, Inc.
168 Packard Bldg.
Mattydale, NY 13211

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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
Stephen W. Johnson
Bankers Trust Bldg., Suite 1425
Utica, NY 13501
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications	:	
of	:	
RICH PLAN OF UTICA, INC.	:	
and	:	DETERMINATION
RICH PLAN OF SYRACUSE, 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 December 1, 1974 through	:	
August 31, 1977.	:	

Applicants, Rich Plan of Utica, Inc., Truck Route 5A, Yorkville, New York 13495 and Rich Plan of Syracuse, Inc., 5858 E. Molloy Road, Pckd. Building 168, Mattydale, New York 13211, filed applications 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, 1974 through August 31, 1977 (File Nos. 22567 and 22568).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on September 20, 1979 at 1:15 P.M. Applicants appeared by Stephen W. Johnson, Esq. The Audit Division appeared by Ralph Vecchio, Esq. (Kathy Sanderson, Esq., of counsel).

ISSUE

Whether frozen concentrates, commercially known as lemonade and limeade, sold by applicants are subject to the sales tax imposed by section 1105(a) of the Tax Law or whether they are exempt under section 1115(a)(1).

FINDINGS OF FACT

1. On June 26, 1978, the Audit Division issued notices of determination and demand for payment of sales and use taxes due against Rich Plan of Utica, Inc. and Rich Plan of Syracuse, Inc. for sales taxes due of \$784.41 and \$294.47, respectively, plus simple interest. Both notices were issued as the result of field audits and the amounts due represented tax due from the sale of frozen lemonade and limeade.

2. Applicants executed consents extending the period of limitation for assessment to December 31, 1978.

3. It was the Audit Division's position that the sale of frozen concentrates known as lemonade and limeade, when reconstituted, were fruit drinks containing less than 70 percent natural fruit juice and therefore taxable.

4. Applicants contended that the frozen lemonade and limeade are exempt from tax as a food or food product. Other than their common use, the products could also be used as an additive for flavoring foods in cooking, baking or other preparation.

5. Applicants submitted a letter from the Juice Products Division of Seneca Foods Corporation which stated that both frozen lemonade and limeade have a minimum of 70 percent lemon or lime juice. They also submitted a letter from Miss Muffet Foods, Inc. which stated that Ventura Coastal (a food packer) advised them that lemon concentrate is composed of 70.7 percent by volume of lemon juice.

6. The frozen lemonade and limeade sold by applicants contained less than 70 percent natural fruit juice when reconstituted.

CONCLUSIONS OF LAW

A. That 20 NYCRR 528.2(b)(2) defines a beverage as a drink, whether sold in liquid form or otherwise; accordingly, the frozen lemonade and limeade sold by applicants constitute the sale of a beverage.

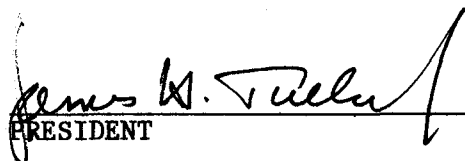
B. That frozen concentrated lemonade and limeade when reconstituted contain less than 70 percent natural fruit juice by volume, an amount required for sales tax exemption within the meaning and intent of section 1115(a)(1) of the Tax Law and under 20 NYCRR 528.2(b)(3).

C. That the applications of Rich Plan of Utica, Inc. and Rich Plan of Syracuse, Inc. are denied; and that the notices of determination and demand for payment of sales and use taxes due issued June 26, 1978 are sustained.

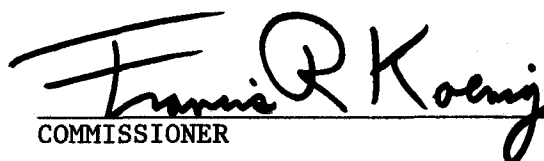
DATED: Albany, New York

STATE TAX COMMISSION

JAN 09 1981


PRESIDENT


COMMISSIONER


COMMISSIONER