

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

February 11, 1983

Standard Vending of Oneonta, Inc.
Henry & Richard Wells, Individ. & as Officers
7406 Taft Park Dr.
East Syracuse, NY 13057

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 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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representatives:

William F. Carrigan
Carrigan & Ryan
206 Onondaga Plaza
Syracuse, NY 13202

Henry Wells
312 Cove Lane
Fayetteville, NY 13066

Richard Wells
7371 Barberry La.
Manlius, NY 13104

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Standard Vending of Oneonta, Inc.
Henry & Richard Wells, Indiv. & as Officers : 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:
9/1/74 - 11/30/77.

State of New York
County of Albany

David Parchuck, 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 11th day of February, 1983, he served the within notice of Decision by certified mail upon Standard Vending of Oneonta, Inc., Henry & Richard Wells, Indiv. & as Officers the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Standard Vending of Oneonta, Inc.
Henry & Richard Wells, Indiv. & as Officers
7406 Taft Park Dr.
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
11th day of February, 1983.

David Parchuck

Ann O'Hara

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Standard Vending of Oneonta, Inc. :
Henry & Richard Wells, Indiv. & as Officers : **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 9/1/74 - 11/30/77.

State of New York
County of Albany

David Parchuck, 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 11th day of February, 1983, he served the within notice of Decision by certified 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:

William F. Carrigan
Carrigan & Ryan
206 Onondaga 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
11th day of February, 1983.

David Parchuck

James A. Hagellen

**AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174**

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Standard Vending of Oneonta, Inc. :
Henry & Richard Wells, Indiv. & as Officers : **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 9/1/74 - 11/30/77. :

State of New York
County of Albany

David Parchuck, 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 11th day of February, 1983, he served the within notice of Decision by certified mail upon Henry Wells the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Henry Wells
312 Cove Lane
Fayetteville, NY 13066

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
11th day of February, 1983.

David Parchuck

James P. Hayden

**AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW,
SECTION 174**

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Standard Vending of Oneonta, Inc. :
Henry & Richard Wells, Indiv. & as Officers : **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 9/1/74 - 11/30/77.

State of New York
County of Albany

David Parchuck, 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 11th day of February, 1983, he served the within notice of Decision by certified mail upon Richard Wells the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard Wells
7371 Barberry Lane
Manlius, NY 13104

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
11th day of February, 1983.

David Parchuck

Conrad A. Hegland
**AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174**

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition.	:	
	:	
of	:	
	:	
STANDARD VENDING OF ONEONTA, INC.	:	DECISION
HENRY WELLS AND RICHARD WELLS,	:	
INDIVIDUALLY AND AS OFFICERS	:	
	:	
for Revision of Determinations or for Refunds	:	
of Sales and Use Taxes under Articles 28 and	:	
29 of the Tax Law for the Period September 1,	:	
1974 through November 30, 1977.	:	

Petitioners, Standard Vending of Oneonta, Inc., Henry Wells and Richard Wells, individually and as officers, 7406 Taft Park Drive, East Syracuse, New York 13057, 312 Cove Lane, Fayetteville, New York 13066 and 7371 Barberry Lane, Manlius, New York 13104 respectively, filed a petition for revision of determinations or for refunds of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 1974 through November 30, 1977 (File No. 22409).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York on March 25, 1982 at 1:15 P.M. and continued at Building #9, State Campus, Albany, New York on April 2, 1982 at 1:15 P.M. Petitioners appeared by William F. Carrigan, Esq. The Audit Division appeared by Paul B. Coburn Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether sales through vending machines of items ordinarily exempt from tax under section 1115(a)(1) of the Tax law were for on premises or off premises consumption.

II. Whether Henry Wells and Richard Wells are personally liable for taxes due from Standard Vending of Oneonta, Inc.

FINDINGS OF FACT

1. Petitioner, Standard Vending of Oneonta, Inc., (SVO) was engaged in the sale of cigarettes, candy, beverages and food items through coin operated vending machines at the State University of New York at Oneonta. Petitioner also operated amusement games at said location.

2. On April 24, 1978, as the result of an audit, the Audit Division issued notices of determination and demand for payment of sales and use taxes due against SVO, and Henry Wells and Richard Wells, individually and as officer of SVO, covering the period September 1, 1974 through November 30, 1977 for taxes due of \$19,916.90, plus penalty and interest of \$7,084.30, for a total of \$27,001.20.

3. SVO did not maintain books and records of its vending operations. The Audit Division determined the sales made by SVO from sales summaries furnished by the college. The contractual agreement between SVO and the college provided that the college would empty the money from the machines, deduct its commission and remit to SVO its share of the receipts. The sales summaries indicated the total receipts from each vending machine. The Audit Division computed taxable sales of \$487,793.00 for the audit period after adjusting total receipts for the cigarette tax and the sales tax. SVO reported taxable sales of \$155,842.00 for the period September 1, 1974 through February 29, 1976. SVO did not file sales tax returns for periods thereafter. The Audit Division therefore asserted sales tax due of \$19,916.90 on the additional taxable sales of \$331,951.00.

4. The auditor visited the college on February 7, 1978 and, accompanied by the person responsible for collecting the money from the machines, toured various locations including 4 dormitories, a classroom building, the cafeteria and the administration building. The auditor testified that he observed tables and chairs in the immediate vicinity of machines dispensing food and drink. Consequently, all sales were considered consumed on premises.

5. At a pre-hearing conference, the Audit Division conceded that SVO's liability should be revised to \$16,545.48 based on the following audit policy adopted December 14, 1978:

"There is rebuttable presumption that 66 2/3 percent of vending machine sales of non-taxable food are considered for off premises consumption. This presumption may be rebutted by a vendor who can submit evidence to prove that the sales for off premises consumption are in excess of 66 2/3 percent."

6. SVO agreed that the total sales determined on audit were correct. However, it claimed that, except for the snack bar in Schumacher Hall (classroom building), there were no tables and chairs or eating facilities near the vending machines, and that therefore, all items were consumed off premises.

7. On June 23, 1981, SVO filed and paid the following sales tax returns:

<u>PERIOD</u>	<u>TAX</u>	<u>PENALTY & INTEREST</u>	<u>TOTAL</u>
2/28/75	\$1,575.90	\$ 775.90	\$2,351.80
5/31/75	1,458.72	1,414.95	2,873.67
8/31/75	693.48	651.87	1,345.35

Said returns were filed by the newly employed controller of SVO at the request of the Tax Compliance Bureau. He was not aware that returns had been previously filed for the same periods.

8. Henry Wells was the sole stockholder, officer and director of SVO. Henry Wells admitted that he is personally responsible for any taxes determined

due from SVO. Richard Wells was not an officer, employee or in any way connected with the operations of SVO.

9. Petitioners failed to establish that their failure to file sales tax returns or pay over any sales tax was due to reasonable cause.

CONCLUSIONS OF LAW

A. That 20 NYCRR 527.8(g) provides that (1) vending machine operations carried on in premises where facilities such as tables, chairs, benches, counters, etc. are provided for customers are considered to be eating establishments selling food or drink for on premises consumption, and sales made through such machines are taxable, and (2) when food or drink is sold through vending machines and no facilities are provided for customers, such sales are deemed to be for off premises consumption and are taxed accordingly.

B. That eating facilities were provided where the vending machines dispensing items ordinarily exempt from tax under section 1115(a)(1) of the Tax Law were located; that the Audit Division properly considered that 66 2/3 percent of such vending sales were consumed off premises and that the balance were subject to the tax imposed under section 1105(d) of the Tax Law.

C. That petitioner Henry Wells was a "person required to collect tax" as defined in section 1131(1) of the Tax Law and therefore is personally liable for the sales tax asserted against SVO pursuant to section 1133(a) of the Tax Law.

That in accordance with Finding of Fact "8" petitioner Richard Wells was not a person required to collect tax.

D. That the petition of Richard Wells is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 24, 1978 is cancelled; that the petition of Standard Vending of Oneonta, Inc. and

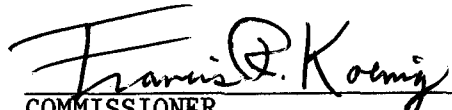
Henry Wells is denied; however, the Audit Division is hereby directed to modify the notices of determination and demand for payment of sales and use taxes due issued April 24, 1978 by revising the tax due to \$16,545.48 as indicated in Finding of Fact "5" and credit petitioner for any duplicate payments caused by the circumstances described in Finding of Fact "7".

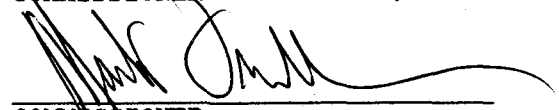
DATED: Albany, New York

FEB 11 1983

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER

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

February 11, 1983

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Henry Wells
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Fayetteville, NY 13066

Richard Wells
7371 Barberry La.
Manlius, NY 13104

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

STANDARD VENDING OF ONEONTA, INC.
HENRY WELLS AND RICHARD WELLS,
INDIVIDUALLY AND AS OFFICERS

DECISION

for Revision of Determinations or for Refunds
of Sales and Use Taxes under Articles 28 and
29 of the Tax Law for the Period September 1,
1974 through November 30, 1977.

Petitioners, Standard Vending of Oneonta, Inc., Henry Wells and Richard Wells, individually and as officers, 7406 Taft Park Drive, East Syracuse, New York 13057, 312 Cove Lane, Fayetteville, New York 13066 and 7371 Barberry Lane, Manlius, New York 13104 respectively, filed a petition for revision of determinations or for refunds of sales and use taxes under Articles 28 and 29 of the Tax Law for the period September 1, 1974 through November 30, 1977 (File No. 22409).

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4. The auditor visited the college on February 7, 1978 and, accompanied by the person responsible for collecting the money from the machines, toured various locations including 4 dormitories, a classroom building, the cafeteria and the administration building. The auditor testified that he observed tables and chairs in the immediate vicinity of machines dispensing food and drink. Consequently, all sales were considered consumed on premises.

5. At a pre-hearing conference, the Audit Division conceded that SVO's liability should be revised to \$16,545.48 based on the following audit policy adopted December 14, 1978:

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6. SVO agreed that the total sales determined on audit were correct. However, it claimed that, except for the snack bar in Schumacher Hall (classroom building), there were no tables and chairs or eating facilities near the vending machines, and that therefore, all items were consumed off premises.

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8. Henry Wells was the sole stockholder, officer and director of SVO. Henry Wells admitted that he is personally responsible for any taxes determined

due from SVO. Richard Wells was not an officer, employee or in any way connected with the operations of SVO.

9. Petitioners failed to establish that their failure to file sales tax returns or pay over any sales tax was due to reasonable cause.

CONCLUSIONS OF LAW

A. That 20 NYCRR 527.8(g) provides that (1) vending machine operations carried on in premises where facilities such as tables, chairs, benches, counters, etc. are provided for customers are considered to be eating establishments selling food or drink for on premises consumption, and sales made through such machines are taxable, and (2) when food or drink is sold through vending machines and no facilities are provided for customers, such sales are deemed to be for off premises consumption and are taxed accordingly.

B. That eating facilities were provided where the vending machines dispensing items ordinarily exempt from tax under section 1115(a)(1) of the Tax Law were located; that the Audit Division properly considered that 66 2/3 percent of such vending sales were consumed off premises and that the balance were subject to the tax imposed under section 1105(d) of the Tax Law.

C. That petitioner Henry Wells was a "person required to collect tax" as defined in section 1131(1) of the Tax Law and therefore is personally liable for the sales tax asserted against SVO pursuant to section 1133(a) of the Tax Law.

That in accordance with Finding of Fact "8" petitioner Richard Wells was not a person required to collect tax.

D. That the petition of Richard Wells is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued April 24, 1978 is cancelled; that the petition of Standard Vending of Oneonta, Inc. and

Henry Wells is denied; however, the Audit Division is hereby directed to modify the notices of determination and demand for payment of sales and use taxes due issued April 24, 1978 by revising the tax due to \$16,545.48 as indicated in Finding of Fact "5" and credit petitioner for any duplicate payments caused by the circumstances described in Finding of Fact "7".

DATED: Albany, New York

FEB 11 1983

STATE TAX COMMISSION

Robert A. Bachant
ACTING PRESIDENT

Francis R. Koenig
COMMISSIONER

W. J. J. J.
COMMISSIONER

P 389 758 590
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Standard Vending of Onondaga, Inc. Henry & Richard Wells, Indiv. & as Officers</i>	
Street and No. <i>7406 Taft Park Dr.</i>	
P.O., State and ZIP Code <i>East Syracuse, NY 13057</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 389 758 591
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>William F. Carrigan Carrigan & Ryan</i>	
Street and No. <i>206 Onondaga Plaza</i>	
P.O., State and ZIP Code <i>Syracuse, NY 13202</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 389 758 592
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Henry Wells</i>	
Street and No. <i>312 Cove Lane</i>	
P.O., State and ZIP Code <i>Fayetteville, NY 13066</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 389 758 593
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Richard Wells</i>	
Street and No. <i>7371 Barberry Lane</i>	
P.O., State and ZIP Code <i>Manlius, NY 13104</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

TA 26 (9-79)

STATE OF NEW YORK

State Tax Commis

TAX APPEALS BUR

STATE CAMPU

ALBANY, N. Y. 12

☐ HOLD

DATE

2-15

1ST NOTICE

2-24

2ND NOTICE

3-2

RETURN

CLAIM CHECK

NO. 817809

CEP

P 389 758 593

MAIL



RECEIVED

Disclaimers

Attention

Investment

Investment

Investment

Investment

the enclosed in this envelope

Richard Wells

7371 Barberrry Lane

Manlius, NY 13150

Rep's Copy
1-2 Hadley

"Missouri Due To
Incorrect Zip Code"

13104

