

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

THE HERTZ CORPORATION

DECISION

for Redetermination of a Deficiency or for  
Refund of Corporation Franchise Tax under  
Article 9-A of the Tax Law for the Period  
Ended December 31, 1983.

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Petitioner, The Hertz Corporation, 660 Madison Avenue, New York, New York 10021, filed petitions for redetermination **of** a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the period ended December 31, 1983 (File No. 65637).

A hearing was held before Joseph W. Pinto, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 26, 1987 at 10:00 A.M. The petitioner appeared by its Tax Audits Manager, Robert E. Wines. The Audit Division appeared by John P. Dugan, Esq. (Herbert Kamrass, Esq. , of counsel).

#### ISSUE

Whether petitioner filed petitions for a hearing with the State Tax Commission within ninety days from the date of the notices and demands for payment.

#### FINDINGS OF FACT

1. On July 18, 1985, the Audit Division issued to The Hertz Corporation, a Notice and Demand for Payment of Additional Corporation Tax Due for the period ended December 31, 1983, Assessment No. C8507180695, in the sum of \$245,156.19. The assessment represented additional interest and penalties on the amount of corporation franchise tax due for the period ended December 31,

1983, since the report and tax were not timely received by March 15, 1985, the extended due date. Application for a further extension of time to file was deemed invalid since less than 90 percent of the tax was paid with the report.

2. On July 18, 1985, the Audit Division issued to The Hertz Corporation, a Notice and Demand for Payment of Corporation Tax for the period ended December 31, 1983, Assessment No. C8507180694, in the sum of \$38,646.53. The assessment represented additional interest and penalties for late filing of its Metropolitan Transportation Business Tax Surcharge Report for the period ended December 31, 1983. The original due date had been extended to March 15, 1985 based on petitioner's allegation that it **was** prepaying the full amount of its tax. However, on June 17, 1985, over three months past the extended filing date, petitioner filed its report which indicated substantial underestimation of its tax liability. Therefore, further application for extension was invalid because remittance received with petitioner's application was less than 90 percent of the tax as finally determined.

3. Petitioner filed its petition for redetermination of the Notice and Demand for Payment of Corporation Franchise Tax under Article 9-A of the Tax Law for the period ended December 31, 1983, Assessment No. C8507180695 in the sum of \$245,156.19, on October 17, 1985. Petitioner also filed a Petition for Redetermination of a Deficiency or for Refund of Corporation Franchise Tax under Article 9-A of the Tax Law for the period ended December 31, 1983, Assessment No. C8507180694 in the sum of \$38,646.53, on October 17, 1985. Both the metered mail stamp and United States Postal Service stamp on the envelopes containing the petitions indicated a date of mailing of October 17, 1985. Each of the aforementioned petitions was filed on the ninety-first day after issuance of the respective notices and demands for payment.

CONCLUSIONS OF LAW

A. That Tax Law § 171 provides, in pertinent part, as follows:

"The state tax commission shall:

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Twenty-first. Provide a hearing, as a matter of right, to any taxpayer upon such taxpayer's request, pursuant to such rules, regulations, **forms** and instructions that the tax commission may prescribe, unless a right to a hearing **is** specifically provided for, modified **or** denied by another provision of this chapter. Where the request for a hearing **is** made by a person seeking review of any taxes determined or claimed to be due under this chapter, the liability of such person shall become finally and irrevocably fixed unless such person, within ninety days from the time such liability **is** assessed, shall petition the tax commission for a hearing to review such liability."

B. That the notices and demands issued to petitioner herein were issued on July 18, 1985 and the petitions filed in response thereto were not filed until October 17, 1985, ninety-one days from the date the notices were issued.

C. That 20 NYCRR 601.3(c) provides, in pertinent part, as follows:

"~~When~~ mailed, the petition will be deemed filed on the date of the United States postmark stamped on the envelope."

In the instant situation, the postmark on the envelopes containing both petitions read October 17, 1985, ninety-one days after issuance of the notices and demands herein. Therefore, neither petition was filed in a timely manner.

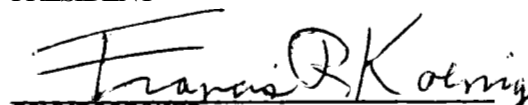
D. That the petitions of The Hertz Corporation are hereby denied and the notices and demands for payment, dated July 18, 1985, for the taxable period ended December 31, 1983 are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 29 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER