

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Arcot Textiles, Inc. : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law :
for the Fiscal Years Ending 4/30/72, 4/30/73 & :
4/30/74. :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of July, 1984, he served the within notice of Decision by certified mail upon Arcot Textiles, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arcot Textiles, Inc.
134 Spring Street
New York, NY 10012

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
18th day of July, 1984.

David Parchuck

Commie A. H. H. H.
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Arcot Textiles, Inc.

:

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AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Fiscal Years Ending 4/30/72, 4/30/73 & 4/30/74.

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of July, 1984, he served the within notice of Decision by certified mail upon Morris Meltzer, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Morris Meltzer
2265 Gerritsen Ave.
Brooklyn, NY 11229

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
18th day of July, 1984.

David Parchuck

James A. Heald

Authorized to administer oaths
pursuant to Tax Law section 174

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

July 18, 1984

Arcot Textiles, Inc.
134 Spring Street
New York, NY 10012

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) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Morris Meltzer
2265 Gerritsen Ave.
Brooklyn, NY 11229
Taxing Bureau's Representative

April 30, 1972, April 30, 1973 and April 30, 1974 for \$665.89, \$1,556.19 and \$1,029.36, respectively. These claims for credit or refund were based on net operating loss deductions for the fiscal years ending April 30, 1975 and April 30, 1976 of \$24,662.56 and \$95,761.02, respectively, which petitioner carried back to the fiscal years at issue.

3. By a letter dated July 9, 1982, the Audit Division denied petitioner's claims for refund. The following explanation was provided:

"Claim for credit or refund must be filed within 27 months from the date of Federal credit or refund. Federal Forms 4188 - Statement of Account Adjustment - Refund Due were dated January 2, 1978... Your claims were not filed within such a period and therefore must be denied".

4. Pursuant to three statements of adjustment dated January 2, 1978 from the Internal Revenue Service, petitioner obtained refunds of federal corporate income taxes of \$12,511.17 plus interest, \$17,891.40 plus interest and \$11,844.94 plus interest for the fiscal years ending April 30, 1972, April 30, 1973 and April 30, 1974, respectively. Petitioner also received corporate income tax refunds from New York City for these fiscal years.

5. Petitioner's accountant, Morris Meltzer, prepared three refund claims, each dated November 30, 1977, for overpayment of New York State taxes for the periods at issue. He testified that they were mailed by first class mail at that time.

"I can't say for certain that I mailed them... I'm pretty sure as I prepared them, I had them signed and I took care of the mailing... And at the same time I mailed those, I mailed the refund claims for the City of New York... The Federal refund claim had already been filed earlier. Sometime, July of 1977."

6. Mr. Meltzer also testified that the Audit Division sent "a little card" that said the claims for refund were being processed although he noted he could not "prove this". He also noted that "I don't recall if it (the card)

was in response to this or some other request, some other item. So, I can't obviously say".

7. Petitioner, which is no longer in business, was described by its accountant as a "textile jobber" owned by two shareholders, Gilbert Aronowitz and Phillip Rabin.

8. There is no evidence of a postmark to show that petitioner mailed the claims for refund on or about November 30, 1977.

CONCLUSIONS OF LAW

A. That pursuant to Tax Law §1087(c) and (d), petitioner was required to file its refund claims by April 2, 1980 (which is two years and ninety days from the date of the statements of adjustment received by petitioner from the Internal Revenue Service).

B. That Tax Law §1087(e) provides, in part, as follows:

"Failure to file claim within prescribed period. -- No credit or refund shall be allowed or made...after the expiration of the applicable period of limitation specified in this article, unless a claim for credit or refund is filed by the taxpayer within such period".

C. That Tax Law §1091(a) provides, in part, as follows:

"Timely mailing. -- If any return, declaration of estimated tax, claim...required to be filed...within a prescribed period or on or before a prescribed date under authority of any provision of this article (twenty-seven), or of article...nine-a...is, after such period or such date, delivered by United States mail to the tax commission, bureau, office, officer or person with which or with whom such document is required to be filed...the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This subsection shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document...and only if such document or payment was deposited in the mail, postage prepaid, properly addressed to the tax commission, bureau, office, officer or person with which or with whom the document is required to be filed or to which or to whom such payment is required to be made. If any document or payment is sent by United States registered mail, such registration shall be prima facie evidence that such document or payment was delivered to the tax commission, bureau, office, officer or person to which or to whom addressed".

D. That Tax Law §1091(a) is patterned after I.R.C. §7502, "Timely Mailing Treated As Timely Filing and Paying".

E. That Treas. Reg. §301.7502-1(d)(1) provides as follows:

"Section 7502 is not applicable unless the document is delivered by U.S. mail to the agency, officer or office with which it is required to be filed. However, if the document is sent by registered mail or certified mail, proof that the document was properly registered or that a postmark certified mail sender's receipt was properly issued therefor, and that the envelope or wrapper was properly addressed to such agency, officer or office shall constitute prima facie evidence that the document was delivered to such agency, officer, or office".

F. That to be timely, petitioner's refund claims should have been delivered to the Audit Division by April 2, 1980, or the claims should have been delivered in an envelope bearing a United States postmark of a date prior to April 3, 1980. The petitioner has not shouldered its burden of proof under Tax Law §1089(e) to show that the refund claims were timely delivered to the Audit Division. Proof of mailing by registered mail (or certified mail for that matter) was not shown. Proof of mailing by ordinary mail does not satisfy the requirement of proving timely delivery of the refund claims to the Audit Division. See Deutsch v. C.I.R., 599 F.2d 44 (2d Cir.), Cert. denied, 444 U.S. 1015.

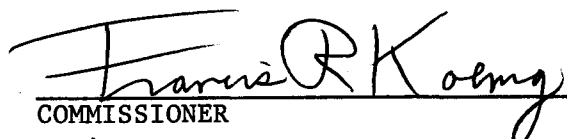
G. That the petition of Arcot Textiles, Inc. is denied.

DATED: Albany, New York

JUL 18 1984

STATE TAX COMMISSION

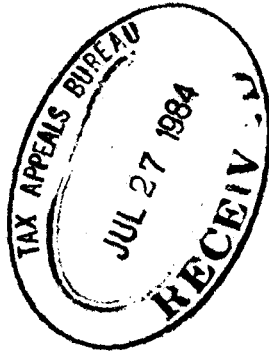
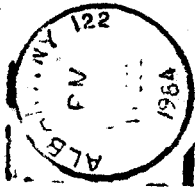

PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

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

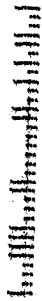


Arcot Textiles, Inc.
134 Spring Street
New York, NY 10012

CERTIFIED

P 440 977 319

MAIL



REQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Date of Request 7/26/84
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition For: Dec. - 7/18/84
Name Arcat Reptiles, Inc.	
Address 134 Spring Street New York, N. Y. 10012	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input type="checkbox"/> Other:	

Searched by	Section	Date of Search

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

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

July 18, 1984

Arcot Textiles, Inc.
134 Spring Street
New York, NY 10012

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NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Morris Meltzer
2265 Gerritsen Ave.
Brooklyn, NY 11229
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ARCOT TEXTILES, INC.	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Fiscal Years	:	
Ending April 30, 1972, April 30, 1973 and	:	
April 30, 1974.	:	

Petitioner, Arcot Textiles, Inc., 134 Spring Street, New York, New York 10012, 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 fiscal years ending April 30, 1972, April 30, 1973 and April 30, 1974 (File No. 38608).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 9, 1984 at 10:45 A.M. Petitioner appeared by Morris Meltzer, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Deborah Dwyer, Esq., of counsel).

ISSUE

Whether petitioner filed timely claims for refund of corporation tax paid for the fiscal years ending April 30, 1972, April 30, 1973 and April 30, 1974.

FINDINGS OF FACT

1. Petitioner, Arcot Textiles, Inc., timely filed its New York State corporation franchise tax reports for the fiscal years ending April 30, 1972, April 30, 1973 and April 30, 1974.

2. On June 1, 1982, the Audit Division received three claims for credit or refund of corporation tax paid from petitioner for the fiscal years ending

April 30, 1972, April 30, 1973 and April 30, 1974 for \$665.89, \$1,556.19 and \$1,029.36, respectively. These claims for credit or refund were based on net operating loss deductions for the fiscal years ending April 30, 1975 and April 30, 1976 of \$24,662.56 and \$95,761.02, respectively, which petitioner carried back to the fiscal years at issue.

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G. That the petition of Arcot Textiles, Inc. is denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 18 1984


PRESIDENT


COMMISSIONER


COMMISSIONER