

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
The Hertz Corporation : AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation
Franchise Tax under Article(s) 9A of the Tax Law:
for the Period Ended 12/31/83.

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

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 29th day of May, 1987, he served the within notice of decision by certified mail upon Robert E. Wines, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert E. Wines
The Hertz Corporation
660 Madison Avenue
New York, NY 10021

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
29th day of May, 1987.

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

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

May 29, 1987

The Hertz Corporation
660 Madison Avenue
New York, NY 100218445

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Robert E. Wines
The Hertz Corporation
660 Madison Avenue
New York, NY 10021

STATE OF NEW YORK

STATE TAX COMMISSION

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. :

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:

* * *

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.

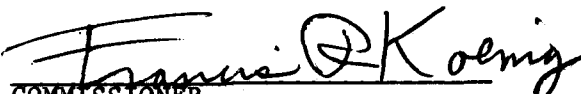
D. That the petitions of The Hertz Corporation are hereby denied and the notices and demands for payment, dated July 18, 1985, for the taxable period ended December 31, 1983 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 29 1987


PRESIDENT


COMMISSIONER


COMMISSIONER