

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

AQUA GULF CORPORATION

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Highway Use :
Taxes under Article(s) 21 of the :
Tax Law for the ~~XXXXXX~~ Period(s) :
January 1, 1969 through September 30, 1970

State of New York
County of Albany

John Huhn, 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 4th day of January, 1978, ~~he~~ served the within
Notice of Determination by (~~xxxxxx~~) mail upon Aqua Gulf Corporation

(~~representative of the~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Aqua Gulf Corporation
1032 Julia Street
Elizabeth, New Jersey 07201

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~~
~~xxxxxx~~) 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

4th day of January, 1978

Janet Mack

John Huhn

Peter Crotty

John J. Sollecito

Aqua Gulf Corporation

Article 21

Formal Hearing Determination

On June 7, 1977, a State Tax Commission Determination was mailed to Aqua Gulf Corporation, 84 Bloomfield Ave., Staten Island, NY 10314. This Determination was returned by the United States Postal Service as "moved, not forwarded."

The Miscellaneous Tax Bureau has now informed us that the current address of the petitioner is 1032 Julia Street, Elizabeth, NJ 07201. Section 510 of the Tax Law relates that notice may be given by mailing to the address given in the last return filed.

Because the hearing was held in May 23, 1974, and the Determination not made until three years after, it is now determined that the original mailing was incorrect. Therefore, the State Tax Commission Determination is being reissued under the date of January 4, 1978.

Director, Tax Appeals Bureau

December 28, 1977

TA-26 (4-76) 25M

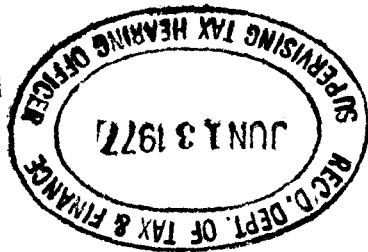
STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU

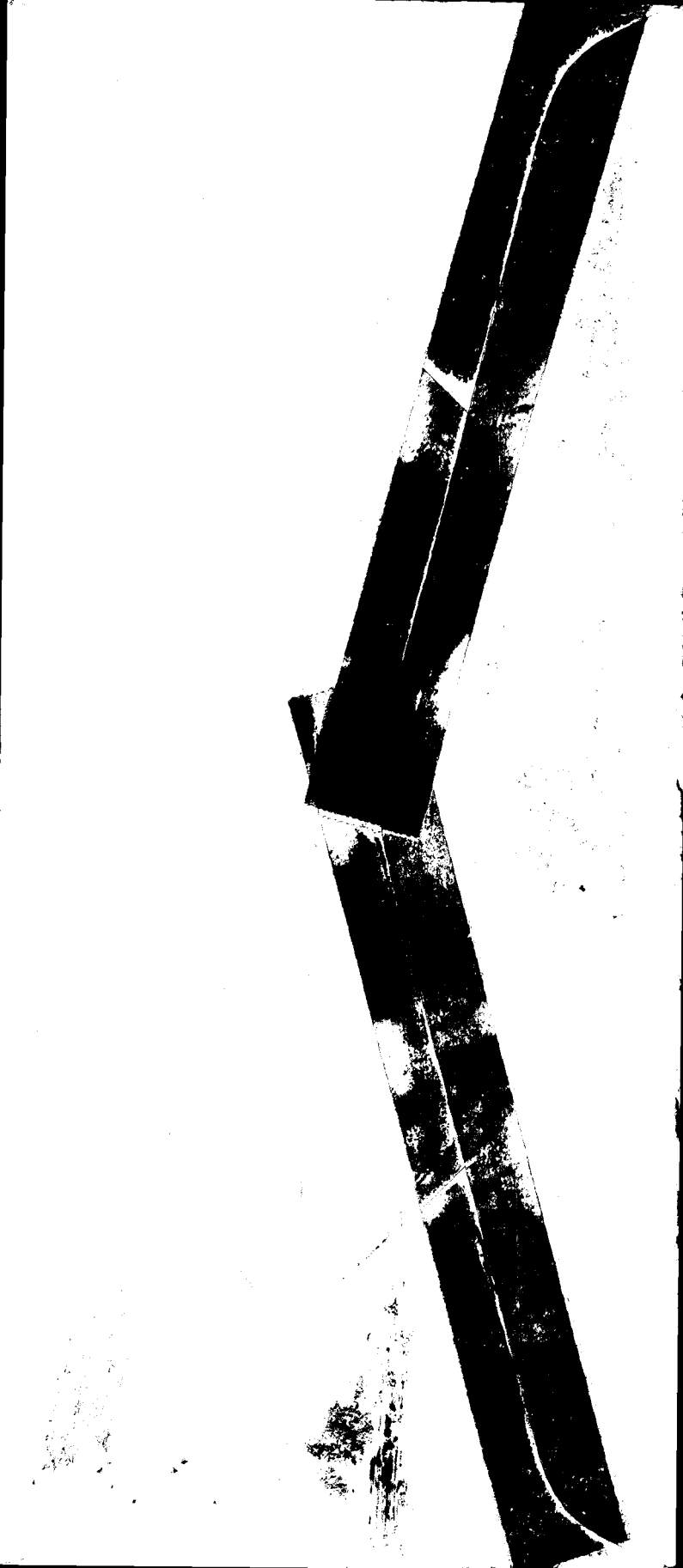
STATE CAMPUS
ALBANY, N. Y. 12227



- REASON FOR CHANGE
- ☐ Moved, but no address
 - ☐ No such number
 - ☒ Moved, not forwardable
 - ☐ Addressee unknown

Aqua Gulf Corporation
84 Blomfield Avenue
Staten Island, New York 10314





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

AQUA GULF CORPORATION

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Highway Use
Taxes under Article ~~XX~~ 21 of the
Tax Law for the ~~years~~ or Period(s)
January 1, 1969 - September 30, 1970

State of New York
County of Albany

Bruce Batchelor, 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 7th day of June, 1977, he served the within

Determination by ~~(certified)~~ mail upon Aqua Gulf Corporation

~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Aqua Gulf Corporation
84 Bloomfield Avenue
Staten Island, New York 10314

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)~~
~~xxx 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

7th day of June, 1977

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

AQUA GULF CORPORATION

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Highway Use :
Taxes under Article (8) 21 of the :
Tax Law for the ~~years~~(s) or Period(s) :
January 1, 1969 - September 30, 1970

State of New York
County of Albany

Bruce Batchelor , 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 7th day of June , 19 77, *he served the within
Determination by (~~certified~~) mail upon Joseph Lempel CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Joseph Lempel CPA
c/o Lennox, Lempel, Rogal & Nasser
100 Park Avenue
Staten Island, New York 10302
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

7th day of June , 19 77

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

June 7, 1977

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **457-1723**

Aqua Gulf Corporation
84 Bloomfield Avenue
Staten Island, New York 10314

Gentlemen:

Please take notice of the **Determination**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **510** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **30 days**
from the date of this notice.

Inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned. They
will be referred to the proper party for reply.

Very truly yours,

Paul E. Coburn
Supervising Tax Hearing Officer

Enc.

cc: Petitioner's Representative:
Joseph Lempel CPA
c/o Lennox, Lempel, Rogal & Nasser
100 Park Avenue
~~Lennox, Lempel, Rogal & Nasser~~
Staten Island, New York 10302

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
AQUA GULF CORPORATION	:	DETERMINATION
for Review of a Denial of a Claim	:	
for Refund of Fuel Use Taxes under	:	
Subdivision 3 of Section 503-a of the	:	
Highway Use Tax Law Article 21 of the	:	
Tax Law for the Periods January 1, 1969	:	
through September 30, 1970.	:	

Aqua Gulf Corporation, 84 Bloomfield Avenue, Staten Island, New York 10314, filed an application under subdivision 3 of section 503-a of Article 21 of the Tax Law for review of a determination denying a claim for refund of fuel use taxes under section 503-a of Article 21 of the Tax Law for the periods January 1, 1969 through September 30, 1970. (File No. 01869). The amount of refund or credit claimed is \$2,662.11.

A formal hearing was held on May 23, 1974, at 9:15 A.M., at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The applicant appeared by Joseph Lempel CPA, of Lennox, Lempel, Rogal & Nasser. The Miscellaneous Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq. of counsel).

The record of said hearing has been duly examined and considered.

ISSUE

Whether a refund can now be granted to applicant for amounts paid under the diesel fuel tax on fuel concededly used out-of-state when both the diesel fuel tax and the claim for refund herein were made beyond the one-year limitation period provided in section 503-a subdivision 3 of Article 21 of the Tax Law.

FINDINGS OF FACT

1. Applicant, Aqua Gulf Corporation, entered the trucking business in New York State in 1966. It uses diesel fuel. At that time, applicant purchased its fuel at the pumps of various retail motor fuel stations in both New York and other states. All such fuel purchased in New York was thus tax-paid for the fuel taxes under Article 12-A of the Tax Law.

2. Sometime in January, 1969, applicant purchased its own fuel storage tanks and began to purchase fuel directly from fuel distributors. Applicant, did not, however, begin to file returns for diesel fuel tax under Article 12-A on the correct form MT-104.

3. During the periods January 1, 1969 through September 30, 1971, the applicant had purchased 175,795 gallons of diesel fuel tax free, and used 11,352 gallons for uses which are not taxable and which are not involved in the issues herein. The remaining 164,443 gallons should, it is now conceded, have been reported as taxable under the diesel fuel tax. The amount of \$1,086.21 was

paid to the State which, at nine cents a gallon, would represent 1,207 gallons. This amount was paid on the wrong forms, but applicant has received credit for it. The remaining fuel was not reported on any timely filed return. During the periods January 1, 1969 through September 30, 1970, the periods here in issue, the applicant used 23,166 gallons of fuel outside of New York State. Under prescribed procedures, a refund may have been due to applicant under the Fuel Use Tax of section 503-a of the Tax Law on some of this fuel.

4. An audit of applicant was commenced sometime prior to October, 1971. The Miscellaneous Tax Bureau notified applicant on December 7, 1971 by a "ten-day notice" to file returns for diesel fuel taxes under Article 12-A of the Tax Law for the four quarters of 1969, the four quarters of 1970 and the first three quarters of 1971. This computed a diesel fuel tax on 164,443 gallons at nine cents a gallon for the sum of \$14,799.87. It added a delinquency penalty of \$2,866.82 for a total tax due of \$17,666.69. A credit was given for the taxes paid on the fuel use tax return of \$1,086.21 leaving a net amount due of \$16,580.48. The applicant paid the amounts stated on the ten-day notice to be due by payments beginning on January 18, 1972 and thus, by terms of such notice, a proper diesel tax return was deemed to be filed

on that date. Such taxes were paid under protest and under the duress of a danger of not receiving plates for the truck mileage tax imposed by Article 21 of the Tax Law.

5. On or about October 27, 1971, applicant filed a claim for refund of fuel use taxes for the periods January 1, 1969 through September 30, 1970, in the amount of \$2,662.11 on 23,166 gallons of fuel. This claim was filed on advice of a tax examiner for the Department. On or about November 5, 1971, the claim was rejected on the grounds that the credits which were claimed had accrued prior to one year from the filing of the claim and were, therefore, time-barred under section 503-a subdivision 3 of the Tax Law as of October 1, 1971 at the latest. By letter dated January 26, 1972, the Miscellaneous Tax Bureau restated its rejection of these claims for refund.

6. Also on or about October 27, 1971, applicant filed a claim for refund for the period October 1, 1970 through September 30, 1971. This was originally rejected but was finally allowed in the amount of \$2,342.60, and is not now contested.

7. On January 18, 1972, the applicant filed a request for a hearing to review the denial of its claim for refund for fuel used outside of New York State.

CONCLUSIONS OF LAW

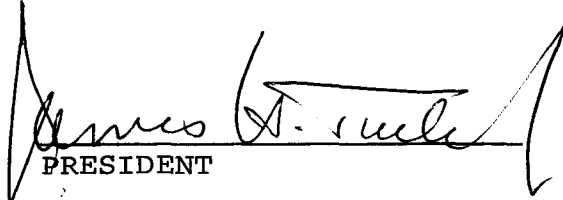
A. That the applicant, Aqua Gulf Corporation, failed to file its claim for refund of excess credits within the one year statutory time period as provided in section 503-a(3) of the Tax Law and 20 NYCRR 493.3(a) and, therefore, said claim for refund is barred by the statute of limitations.

B. That the application of Aqua Gulf Corporation is denied.

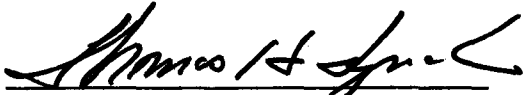
DATED: Albany, New York

June 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER