

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CERTIFIED HEATING OILS, INC.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY ~~(CERTIFIED)~~ MAIL

For a Redetermination of a Deficiency or
a Refund of Motor Fuel Taxes
Taxes under Article ~~(*)~~ 12A of the
Tax Law for the ~~Year~~ Period
12/1/66 - 5/9/71

State of New York
County of Albany

Janet Mack , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 26th day of February , 1975 , she served the within
Notice of Decision ~~(of Determination)~~ by ~~(certified)~~ mail upon Certified Heating
Oils, Inc.

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Certified Heating Oils, Inc.
2970 Amboy Road
Staten Island, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~or~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

26th day of February , 1975.

Katherine D. Manly

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
February 26, 1975

Certified Heating Oils, Inc.
2970 Amboy Road
Staten Island, New York

Gentlemen:

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

Please take further notice that pursuant to
Section (x) **288** 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.

Any 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.
These will be referred to the proper party for
reply.

Very truly yours,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
Law Bureau

AD-1.12 (8/73)

STATE TAX COMMISSION

In the Matter of the Application :
of :
CERTIFIED HEATING OIL, INC. : DECISION
for a Hearing to Review a Determination :
of or for Refund of Motor Fuel Taxes :
under Article 12-A of the Tax Law for :
the Period December 1, 1966 through :
May 9, 1971. :

A hearing was duly held on August 6, 1974, 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 but was not represented. The Miscellaneous Tax Bureau was represented by Saul Heckelman, Esq., appearing by James A. Scott, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is the applicant's liability for taxes on gasoline imported into New York.

FINDINGS OF FACT

1. Applicant is a seller of fuel oil on Staten Island, New York. During the period in question, he also distributed gasoline. This was a period of labor strikes by regular gasoline truck drivers. His principal supplier was Hess. He took delivery of 628,888 gallons of gasoline at a distribution point in New Jersey in his own tank trucks and brought gasoline into New York.

2. Applicant's purchases of gasoline in New Jersey were charged by Hess with New Jersey gasoline taxes. New Jersey had refunded to applicant \$26,141.64, being the New Jersey tax on 373,472 gallons here in dispute. No taxes on any of the 628,888 gallons of gasoline, however, were paid to New York.

3. Applicant is not registered in New York as a distributor of gasoline.

4. Applicant claims that at least some of the gasoline he brought into New York was resold to certain governmental agencies and military installations, but he has not supplied invoices, purchase records or other documents to corroborate these claims. Applicant also claims that his purchasers did not want invoices from him because of the current labor strikes.

5. Applicant has adequately shown that 1,027 gallons which are in issue were delivered to the Federal Aviation Agency in Newark, New Jersey. This accounts for \$67.19 of the determination under review.

6. The determination under review imposes a tax on all of the gasoline applicant purchased from Hess during the period in question.

CONCLUSIONS OF LAW

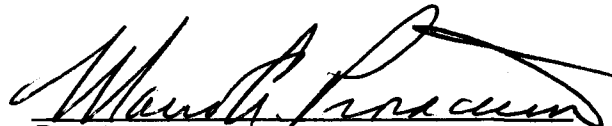
The applicant has failed to carry the burden of proof. His failure to keep records cannot excuse this failure.

The determination under review is erroneous in part and shall be reduced by \$67.19 and the interest and penalties computed thereon, and as so reduced the determination is found to be correct and such sum less amounts already paid is due, together with such further interest as may be computed under the Tax Law.

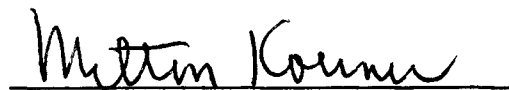
DATED: Albany, New York

STATE TAX COMMISSION

February 26, 1975


PRESIDENT


COMMISSIONER


COMMISSIONER