

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
WILLIAM A. EVANS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Motor Fuel :
Taxes under Article ~~(s)~~ 12A of the :
Tax Law for the ~~Year(s)~~ Period ~~(s)~~ :
September, 1975

State of New York
County of Albany

Denise Burke , 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 23rd day of November , 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon William A. Evans

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: William A. Evans
9579 Southwestern Boulevard
Angola, N.Y.

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)~~
~~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

23rd day of November , 1976

Denise Burke

John Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM A. EVANS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Motor Fuel :
Taxes under Article ~~(a)~~ 12A of the :
Tax Law for the ~~Year(s)~~ Period ~~(s)~~ :
September, 1975

State of New York
County of Albany

Denise Burke , 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 23rd day of November , 1976, she served the within
Notice of Determination by ~~(certified)~~ mail upon Leo J. Fallon, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Leo J. Fallon, Esq.
Offermann, Fallon, Mahoney & Cassano, Esq.
1776 Statler Hilton
Buffalo, N.Y. 14202
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

23rd day of November , 1976.

Janet Mack

Denise Burke



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

November 23, 1976

TELEPHONE: (518) **457-3830**

William A. Evans
9579 Southwestern Boulevard
Angola, N.Y.

Dear Mr. Evans:

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

Please take further notice that pursuant to
Section(§) **208** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
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 B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
WILLIAM A. EVANS	:	DETERMINATION
for Revision or for Refund of Motor Fuel	:	
Taxes under Article 12A of the Tax Law	:	
for September, 1975.	:	

Applicant, William A. Evans, 9579 Southwestern Boulevard, Angola, New York, has filed an application for revision or for refund of motor fuel taxes under Article 12A of the Tax Law for September, 1975. (File No. 00654). A formal hearing was held before Julius E. Braun, Esq., Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York on June 7, 1976 at 3:00 P.M. Applicant appeared by Leo J. Fallon, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether a return of tax on motor fuels was timely filed and if not timely, whether the delay in filing was excusable.

FINDINGS OF FACT

1. Applicant, William A. Evans, a wholesale petroleum distributor, at 9579 Southwestern Boulevard, Angola, New York prepared his September, 1975 return of tax on motor fuels and had it certified by his bookkeeper on October 24, 1975. It was then mailed and the envelope bore a post-mark for Wednesday, October 29, 1975.

The return of tax on motor fuel was received and stamped by the mail room of the Department of Taxation and Finance on Monday, November 3, 1975.

2. On November 7, 1975, the Miscellaneous Tax Bureau issued a Notice of Penalty Due Under Motor Fuel Tax Law for the month of September, 1975 against the applicant, William A. Evans, in the amount of \$4,279.60.

3. Applicant, William A. Evans, had for eleven months of 1975 timely filed his return of tax on motor fuel. No documentary or other evidence was presented that returns of tax on motor fuel for any other period was not timely made.

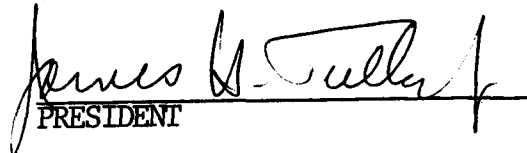
CONCLUSIONS OF LAW

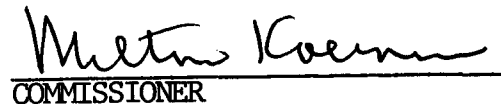
A. That pursuant to section 287 of the Tax Law and 20NYCRR 410.2 every distributor of motor fuel must file with the Miscellaneous Tax Bureau a return of tax on motor fuel not later than the last day of the month following that for which the return is made. Therefore, pursuant to the aforesaid section and regulations, applicant, William A. Evans, has failed to timely file his return of motor fuel.

B. That, however, pursuant to section 289(b) of the Tax Law, because of excusable delay and the lack of any prior violations, the notice of penalty issued November 7, 1975 is cancelled.

DATED: Albany, New York
November 23, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER