

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM EVANS

For a Redetermination of a Deficiency or
a Refund of Motor Fuel
Taxes under Article(s) 12-A of the
Tax Law for the (Year(s)) 1964, 1965, 1966
and 1967.

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

State of New York
County of Albany

MARTHA FUNARO

, 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 27th day of February, 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon WILLIAM EVANS

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

Mr. William Evans
79 Fillmore Avenue
Buffalo, 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) 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

27th day of February, 1973.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM EVANS

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a Refund of Motor Fuel
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Tax Law for the (Year(s) 1964, 1965,
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MARTHA FUNARO

, 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 27th day of February, 1973, she served the within
Notice of Decision (or 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.
1776 Statler Hilton
Buffalo, New York 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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

27th day of February, 1973.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

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

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
February 27, 1973

Mr. William Evans
79 Fillmore Avenue
Buffalo, New York

Dear Mr. Evans:

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

Please take further notice that pursuant to **section 288 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **30 days** after
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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
WILLIAM EVANS : DETERMINATION
for a Redetermination of a Deficiency :
or for Refund of Motor Fuel Taxes under :
Article 12-A of the Tax Law for the :
Years 1964, 1965, 1966 and 1967. :

William A. Evans applied for a redetermination of a deficiency or for refund of motor fuel taxes under Article 12-A of the Tax Law for the years 1964, 1965, 1966 and 1967. Formal hearings were held on September 15, 1970, at the offices of the State Tax Commission in the State Office Building, Buffalo, New York before L. Robert Leisner, Hearing Officer. The applicant appeared through Leo J. Fallon, Esq., and the Miscellaneous Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Were the taxpayer's losses from spillage and evaporation of gasoline in excess of that allowed by the Miscellaneous Tax Bureau upon audit?

FINDINGS OF FACT

1. Notices of determination of taxes due for the years 1964 and 1965 under Notice No. 2151, Reg. No. M 1546 on July 6, 1967, and for the years 1966 and 1967 under Notice No. 3077, Reg. No. M 1546. Demands for hearings were timely filed.
2. The Miscellaneous Tax Bureau allows, as a matter of policy, a loss factor of 1% for spillage and evaporation of gasoline where the distributor stores the gasoline in bulk storage before making final shipment and delivery. The policy allows no loss factor for

shipments of gasoline made directly from taxpayer's suppliers to the retailers or taxpayer's customers. No loss factor is allowed on gallonage delivered from retail storage tanks.

3. The 1% loss factor was allowed taxpayer to the extent of gallonage from all tanks used exclusively for bulk storage.

4. The assessments resulted from the disallowances of claimed losses including losses of gallonage claimed to have resulted from evaporation or spillage in a large tank connected to retail pumps.

5. Taxpayer offered no direct evidence of gallonage loss from spillage, evaporation or other kinds of losses.

CONCLUSIONS OF LAW

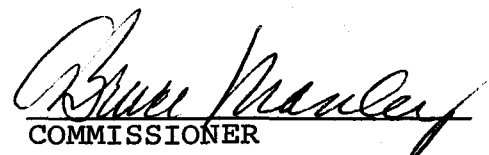
A. The deficiencies for the years 1964, 1965, 1966 and 1967 are sustained.

B. Pursuant to the Tax Law, interest shall be added to the total amounts due until paid.

DATED: Albany, New York
February 27, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER