

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MOBIL OIL CORPORATION

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Motor Fuel :
Taxes under Article ~~(ss)~~ 12-A of the :
Tax Law for the ~~years~~ Period(s) :
January 1971 through December 1972

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 24th day of August , 1976, she served the within
Notice of Decision by ~~(certified)~~ mail upon Mobil Oil
Corporation ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mobil Oil Corporation
Eastern Regional Tax Department
P.O. Box 927
Philadelphia, Pennsylvania 19105
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)~~
~~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

24th day of August , 1976.

Denise Burke

Janet Buck

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MOBIL OIL CORPORATION

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)~~ 12-A of the :
Tax Law for the ~~years~~ or Period ~~(x)~~ :
January 1971 through December 1972

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 24th day of August , 1976, she served the within
Notice of Decision by ~~(certified)~~ mail upon John E. Holt, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: John E. Holt, Esq.
P.O. Box 900
Mobil Oil Corporation
Dallas, Texas 75221
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

24th day of August , 1976

Denise Burke

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (516) **457-2850**

August 24, 1976

**Mobil Oil Corporation
Eastern Regional Tax Department
P.O. Box 927
Philadelphia, Pennsylvania 19105**

Gentlemen:

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

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

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 Petition	:	
of	:	
MOBIL OIL CORPORATION	:	DECISION
for Revision or for Refund of Motor Fuel	:	
Taxes under Article 12-A of the Tax Law	:	
for the Period January 1971 through December	:	
1972	:	

Petitioner, Mobil Oil Corporation, has filed an application for revision or for refund of motor fuel taxes under Article 12-A of the Tax Law for the period January, 1971, through December, 1972. (File No. 00397,) A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Building 9, Room 214A, State Campus, Albany, New York on May 8, 1975, at 10:00 A.M. Petitioner appeared by John E. Holt, Esq. The Miscellaneous Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq., of Counsel.)

ISSUES

I. Whether an application for a "credit in lieu of a refund" under Tax Law § 287 is governed by the two-year statute of limitations for an application for a refund under Tax Law § 289-c(6).

II. Whether enforcement of such statute of limitations concerning "moneys paid in error" imposes the motor fuel tax more than once in violation of Tax Law § 289-a.

III. Whether the raising by the Miscellaneous Tax Bureau of the facts giving rise to the claim for a credit in lieu of a refund before the statute of limitations period has run constitutes a waiver of the requirement of a formal application for a credit or a refund within the statute of limitations period.

IV. Whether the three-year period under Tax Law § 288 within which the State Tax Commission may determine the motor fuel tax due is the governing statute of limitations when a refund or credit in lieu of a refund is sought on account of an incorrect return.

FINDINGS OF FACT

1. Petitioner, Mobil Oil Corporation, purchased a quantity of tax paid motor fuel during the period June, 1971 through September, 1971 and failed to take appropriate credit on the applicable motor fuel tax returns for such purchases, thereby constituting payment of "moneys in error."

2. The Miscellaneous Tax Bureau by letter of February 28, 1973, noted the above failure, and by letter of December 18, 1973, from the Director, Miscellaneous Tax Bureau, to petitioner, Mobil Oil Corporation, granted a net credit adjustment on account thereof "pending field audit" of petitioner's records and return. Petitioner took such credit on its next motor fuel tax return.

3. By letter of July 3, 1974, from the Director, Miscellaneous Tax Bureau, to petitioner, Mobil Oil Corporation, such credit was stated to be disallowed as a result of a field audit.

4. Petitioner, Mobil Oil Corporation, did not make an application for a refund or a credit in lieu of a refund and did not take such credit until more than two years after the tax paid motor fuel was purchased by petitioner; nor until more than two years after the filing of the applicable return with accompanying payment.

CONCLUSIONS OF LAW

A. That the Tax Law § 289-c(6) two-year statute of limitations period within which an application for a refund for moneys paid in error must be made is equally applicable to a credit in lieu of a 289-c(6) refund pursuant to Tax Law § 287.

B. That enforcement of such statute of limitations for "moneys paid in error" does not impose the motor fuel tax twice in violation of Tax Law § 289-a.

C. That no waiver of such statute of limitations occurred as a result of the Miscellaneous Tax Bureau letter to petitioner, Mobil Oil Corporation, of February 28, 1973.

D. That the two-year statute of limitations concerning a taxpayer's refunds or credits in lieu thereof is wholly independent of and not in any way inconsistent with the Tax Law § 288 three-year correction period.

E. That, therefore, the petition of Mobil Oil Corporation
must be denied.

DATED: Albany, N.Y.
August 24, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER