

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

OLD COLONY TRANSPORTATION CO., INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Motor Fuel Tax  
Taxes under Article ~~(x)~~ 12A of the  
Tax Law for the Year ~~(x)~~ ~~(x)~~ ~~(x)~~ Period ~~(x)~~  
September 1974.

State of New York  
County of Albany

Carmen Mottolese, 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 5th day of August, 1976, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Old Colony Trans-  
portation Co., Inc. ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Old Colony Transportation Co., Inc.  
676 Dartmouth Street  
South Dartmouth, Massachusetts 02748  
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

5th day of August, 1976

Carmen Mottolese

Janet Mach



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N.Y. 12227

August 5, 1976

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **457-3850**

Old Colony Transportation Co., Inc.  
676 Dartmouth Street  
South Dartmouth, Massachusetts 02748

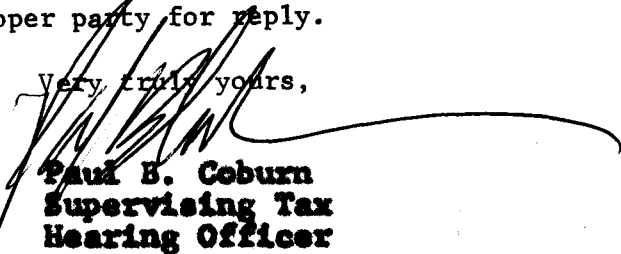
Gentlemen:

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

Please take further notice that pursuant to  
Section(8) **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

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In the Matter of the Application	:	
of	:	
OLD COLONY TRANSPORTATION CO., INC.	:	DETERMINATION
for a Revision of a Determination or for	:	
Refund of Diesel Motor Fuel Taxes under	:	
Article 12-A of the Tax Law for the	:	
period of September, 1974.	:	

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Applicant, Old Colony Transportation Co., Inc., 676 Dartmouth Street, South Dartmouth, Massachusetts 02748, applied for a revision of a determination or for refund of Diesel Motor Fuel taxes under Article 12-A of the Tax Law for the period of September, 1974.

A formal hearing was held at the offices of the State Tax Commission, Albany, New York, on April 17, 1975, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Joseph F. Ierubino, its office manager and the Sales Tax Bureau was represented by Saul Heckelman, Esq., (Alexander Weiss, Esq., of counsel).

#### ISSUE

Was a penalty applicable for late filing of September, 1974 Diesel Motor Fuel taxes where the tax return was due on or before October 31, 1974, but the taxpayer, Old Colony Transportation Co., Inc's, return was first received on November 1, 1974.

FINDINGS OF FACT

1. The taxpayer, Old Colony Transportation Co., Inc., filed a New York State Diesel Motor Fuel tax return for the period of September, 1974.
2. A notice of determination of Diesel Motor Fuel tax penalties for the period September, 1974, was issued on November 19, 1974, against Old Colony Transportation Co., Inc.
3. The taxpayer applied for a revision of the determination of the deficiencies in Diesel Motor Fuel tax.
4. The taxpayer mailed the return and the mailing was postmarked October 29, 1974. The return was received after the due date, on November 1, 1974.
5. The taxpayer previously mailed its monthly returns for Diesel Motor Fuel taxes on the last day of the month in which the return was due. The Miscellaneous Tax Bureau gave the taxpayer two prior warnings that such practice did not comply with the law because the law required the return to be filed and received.
6. The taxpayer presented evidence that it had changed its practice from mailing on the last day to three days before. The taxpayer contended that the fault was the mail system.

CONCLUSIONS OF LAW

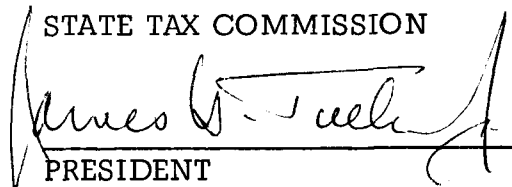
- A. When a return and payment of the tax is due on or before the last


day of the month and the payment is made after that day, under section 287 of the Tax Law, it is late and the law has not been complied with. The mail system is generally not an excuse. However, the taxpayer, Old Colony Transportation Co., Inc., had changed its mailing practice and was unaware of the fact that even with an earlier mailing its return was not arriving on time.

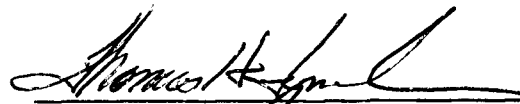
Under the circumstances of its lack of knowledge, the taxpayer acted in good faith, but it now knows that the return is due and the tax must be paid before the end of the month, and that its mail is slow. We believe, and are satisfied, that the 5% penalty in the amount of \$220.82 should be excused pursuant to section 289-b(1) of the Tax Law in this instance. We believe that the taxpayer and its manager, now better informed, can adjust its payment schedule so that payments are timely made in the future.

B. The taxpayer, having moved its payment schedule ahead to allow for slow mail service, acted in good faith. The penalty is cancelled.

DATED: Albany, New York  
August 5, 1976

STATE TAX COMMISSION  
  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER