

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

S.N.B. PRODUCTS 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(s) 12A of the :  
Tax Law for the ~~XXXXXX~~ Period(s) :  
November 1973 through January 1974.

State of New York  
County of Albany

Bruce Batchelor , 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 1st day of June , 1977, ~~she~~ served the within  
Notice of Decision by (~~certified~~) mail upon S.N.B. Products  
Corporation (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: S.N.B. Products Corporation  
544 Elwood Road  
East Northport, New York 11731

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

1st day of June , 1977.

Bruce Batchelor

Janet M. Mel

STATE OF NEW YORK  
STATE TAX COMMISSION

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Tax Law for the ~~Year(s)~~ or Period(s) :  
November 1973 through January 1974.

State of New York  
County of Albany

Bruce Batchelor, 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 1st day of June, 1977, she served the within  
Notice of Decision by ~~(certified)~~ mail upon Darrin H. Berger, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Darrin H. Berger, Esq.  
453 New York Avenue  
Huntington, New York 11743

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

1st day of June, 1977.

Bruce Batchelor

Janet Mack



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

June 1, 1977

TELEPHONE: (518) **457-1723**

**S.W.B. Products Corporation  
344 Elwood Road  
East Northport, New York 11731**

**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 **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 TAX COMMISSION

Petitioner, S.N.B. Products Corporation, 544 Elwood Road, East Northport, New York 11731, filed a petition for refund of Diesel Motor Fuel taxes under Article 12A of the Tax Law for the months November, 1973 through January, 1974. (File No. 00652). A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 15, 1976, at 9:15 A.M. The petitioner appeared by Darrin H. Berger, Esq. The Miscellaneous Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. of counsel).

I. Whether S.N.B. Products Corporation was a retail vendor of diesel motor fuel by virtue of its arrangement to make payment to the supplier for bulk diesel motor fuel delivered to its contract hauler, H.A.C. Farm Lines.

II. Whether S.N.B. Products Corporation was a distributor of diesel motor fuel, within the meaning and intent of Article 12A of the Tax Law.

FINDINGS OF FACT

1. On March 27, 1975 the Miscellaneous Tax Bureau issued a Ten Day Notice to File a Corrected or Sufficient Return of Tax Due under the Diesel Tax Law advising the petitioner, S.N.B. Products Corporation (hereinafter S.N.B.) that an audit had revealed unreported purchases from Mirabito Oil Co. of 25,025 gallons of diesel motor fuel, and that at \$.10 per gallon there was a tax due of \$2,502.50. To this had been added penalty and interest of \$450.45 for a total tax deficiency due of \$2,952.95.

2. On May 1, 1975, the petitioner paid the assessed tax of \$2,502.50. On May 27, 1975, the Miscellaneous Tax Bureau acknowledged receipt of the \$2,502.50 in tax and cancelled the penalty and interest.

3. Petitioner, S.N.B., was a wholesale purchaser of raw milk at its South New Berlin, New York plant. That milk was transported to the parent corporation, Oak Tree Farm Dairy in Huntington, Long Island, New York either in tanks owned or leased by petitioner, S.N.B.

4. During the months at issue, petitioner, S.N.B., neither owned nor leased any tractors.

5. Petitioner, S.N.B., did not receive delivery of bulk diesel fuel from the supplier, Mirabito Oil Co. Mirabito made deliveries in South New Berlin, New York to tanks controlled by H.A.C. Farm Lines. That diesel motor fuel was used by H.A.C. Farm Lines tractors.

6. Petitioner, S.N.B., did not own, lease, or control the tractors operated by H.A.C. Farm Lines in which the diesel motor fuel was consumed.

7. It was stipulated that petitioner, S.N.B. was not a distributor within the meaning of Article 12A of the Tax Law.

#### CONCLUSIONS OF LAW

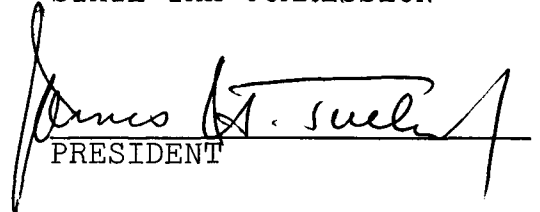
A. That petitioner, S.N.B., neither stored diesel motor fuel in bulk nor used diesel motor fuel in whole or in part to operate any motor vehicle owned, leased or operated by it. Petitioner, S.N.B., was not a retail vendor within the intent and meaning of section 282-a of the Tax Law.

B. That petitioner, S.N.B., being neither a retail vendor nor a distributor within the intent and meaning of section 282-a of the Tax Law was not properly subject to Motor Fuel taxes under Article 12A of the Tax Law for the period November, 1973 through January, 1974.

C. That the petition of S.N.B. Products Corporation  
is granted, and a refund is ordered of \$2,502.50.

DATED: Albany, New York  
June 1, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER