

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Dorchester Sea-3 Products, Inc. : AFFIDAVIT OF MAILING

for a Hearing to Review a Determination of :
Motor Fuel Tax under Article(s) 12A of the Tax
Law for the Period 10/83.

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 17th day of June, 1986, he/she served the within notice of Decision by certified mail upon Dorchester Sea-3 Products, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Dorchester Sea-3 Products, Inc.
P.O. Box 4391
Houston, TX 77210

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
17th day of June, 1986.

David J. Rinaldi
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Dorchester Sea-3 Products, Inc. : AFFIDAVIT OF MAILING

for a Hearing to Review a Determination of :
Motor Fuel Tax under Article(s) 12A of the Tax :
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State of New York :
ss.:
County of Albany :


David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 17th day of June, 1986, he served the within notice of Decision by certified mail upon Ana Gonzalez, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

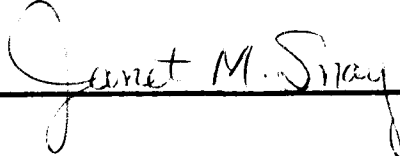
Ana Gonzalez
915 Broadway - 5th Floor
New York, NY 10010

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
17th day of June, 1986.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

June 17, 1986

Dorchester Sea-3 Products, Inc.
P.O. Box 4391
Houston, TX 77210

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 288 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Ana Gonzalez
915 Broadway - 5th Floor
New York, NY 10010

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| DORCHESTER SEA-3 PRODUCTS, INC. | : | DECISION |
| for a Hearing to Review a Determination of | : | |
| Motor Fuel Tax under Article 12-A of the Tax | : | |
| Law for the period October, 1983. | : | |

Petitioner, Dorchester Sea-3 Products, Inc., P.O. Box 4391, Houston, Texas 77210, filed a petition for a hearing to review a determination of motor fuel tax under Article 12-A of the Tax Law for the period October, 1983. (File No. 57524).

A hearing was held before Jean Corigliano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 24, 1986 at 1:15 P.M. Petitioner appeared by Ana Gonzalez, C.P.A. The Audit Division appeared by John P. Dugan, Esq. (Michael Glannon, Esq. of Counsel).

ISSUE

I. Whether the petitioner is liable for payment of a motor fuel tax on its sale of motor fuel to an unregistered distributor.

II. Whether penalties imposed for failure to pay a tax when due should be abated.

FINDINGS OF FACT

1. On September 25, 1984, the Audit Division issued to petitioner, Dorchester Sea-3 Products, Inc., a Notice of Determination of Tax Due Under

[the] Motor Fuel Tax Law, asserting a tax due of \$27,705.04 plus penalty of \$3,878.71 for a total amount due of \$31,583.75 for the month of October 1983.

2. The above determination of tax due resulted from the Audit Division's disallowance of a claimed tax free sale of motor fuel. On Schedule 11D of its Motor Fuel Tax Return for the month of October 1983, petitioner reported a sale to Mellon Energy Corporation ("Mellon") of 346,313 gallons of motor fuel. Petitioner's return asserted that no tax was due on the sale because Mellon was a New York registered distributor of motor fuel at the time the sale occurred. Although Mellon made an application for registration in April 1983, it did not become a registered vendor until January 1984 when its application was approved by the Department of Taxation and Finance. As a result, the Audit Division determined that tax should have been paid by petitioner on its sale of motor fuel to Mellon.

3. Petitioner alleged that the motor fuel it sold to Mellon eventually passed, through a series of sales transactions, to General Oil Distributors, Inc., which eventually paid to the state the tax imposed by article 12-A of the Tax Law. It is the petitioner's position that section 289-a of the Tax Law, which provides that tax shall not be collected more than once on any quantity of gasoline sold within the state, relieves it of any liability for tax on the motor fuel sold to Mellon. The petitioner offered no documents to support its factual allegations.

4. Petitioner requests an abatement of penalties on the ground that it relied in good faith on Mellon's representation that it was a registered distributor at the time of the sale.

CONCLUSIONS OF LAW

A. That Section 287(1) of the Tax Law in effect during the year in issue provided as follows:

"1. Every distributor shall...file with the department of taxation and finance a return, on forms to be prescribed by the tax commission and furnished by such department, stating the number of gallons of motor fuel sold by such distributor in the state during the preceding calendar month....Each such distributor shall pay to the department with the filing of such return, the taxes imposed by this article on each gallon of motor fuel sold by such distributor in the state, and so reported...."

B. That there is no statutory exemption for sales made by one registered distributor to another. Regulations promulgated by the State Tax Commission provide that "the department, to avoid interference with established trade procedure, will permit one registered distributor to sell motor fuel to another registered distributor tax free" [20 NYCRR 410.7(a)]. However, if a registered distributor sells to an unregistered distributor, or to one whose registration has been withdrawn, cancelled or revoked, he does so at his own peril, "as the department will require him to pay the tax" [20 NYCRR 410.7 (c)]. The petitioner was a registered distributor of motor fuel and was required to pay a tax on its sale of motor fuel to Mellon. If another party can show that it erroneously paid a tax on the same motor fuel, it may be entitled to a refund. However, petitioner's liability would remain unaffected.

C. That a penalty is imposed by section 289-b, subdivision (1) of the Tax Law for failure to pay a tax within the time required by article 12-A. The Tax Commission may remit all or part of such penalty if satisfied that the delay was excusable [Tax Law, § 289-b(1)]. Petitioner's reliance on Mellon's representation that it was a registered distributor does not constitute a reasonable excuse for failure to pay the tax due. Accordingly, the penalty must be sustained.


D. That the petition of Dorchester Sea-3 Products, Inc. is denied and the notice of determination issued on September 25, 1984 is sustained.


DATED: Albany New York

STATE TAX COMMISSION

JUN 17 1986


PRESIDENT


COMMISSIONER


COMMISSIONER