

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Edson Oil Co., Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Motor Fuel Tax :
under Article 12A of the Tax Law for the Periods :
February, 1980 and March, 1980. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

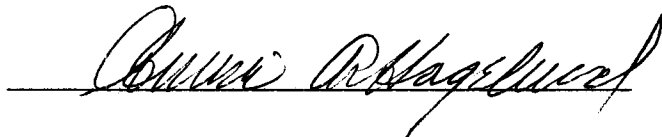
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 21st day of October, 1983, she served the within notice of Decision by certified mail upon Edson Oil Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

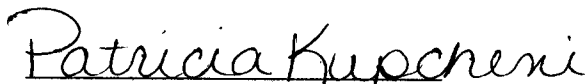
Edson Oil Co., Inc.
RD 3 Box 191A
Windsor, NY 13865

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
21st day of October, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

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AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 21st day of October, 1983, she served the within notice of Decision by certified mail upon Stanley Pelter the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stanley Pelter
Esserman & Pelter
141 Washington Ave.
Endicott, NY 13760

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
21st day of October, 1983.

Patricia Kupcheni

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

Connie Hagelund

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

October 21, 1983

Edson Oil Co., Inc.
RD 3 Box 191A
Windsor, NY 13865

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, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted 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
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Stanley Pelter
Esserman & Pelter
141 Washington Ave.
Endicott, NY 13760
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
EDSON OIL CO., INC.	:	DECISION
	:	
for a Revision or for Refund of	:	
Motor Fuel Tax under Article 12-A of the Tax	:	
Law for the Periods February, 1980 and	:	
March, 1980.	:	

Petitioner, Edson Oil Co., Inc., RD 3, Box 191A, Windsor, New York 13865, filed a petition for a hearing to review a determination of motor fuel tax under Article 12-A of the Tax Law for the periods February, 1980 and March, 1980 (File No. 32149).

Petitioner has waived a formal hearing in this matter and has submitted its case to the State Tax Commission for a decision based on the record as it exists. After due consideration, the Commission renders the following decision.

ISSUE

Whether penalties asserted against petitioner for late filing of its motor fuel tax returns may be abated upon the grounds of reasonable cause.

FINDINGS OF FACT

1. On April 17, 1980, the Audit Division issued to petitioner, Edson Oil Co., Inc. ("Edson") a Notice of Penalty Due Under Motor Fuel Tax Law for the month of February, 1980 in the amount of \$581.30. On May 20, 1980, a similar Notice of Penalty was issued to petitioner for the month of March, 1980 in the amount of \$539.34. These penalties were imposed for late filing by petitioner of its motor fuel tax returns for the months of February and March of 1980.

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2. Petitioner is a petroleum distributor and also owns or operates service station outlets. On March 31, 1980, petitioner's president, Russell Brummer, personally mailed petitioner's motor fuel tax return for the month of February, 1980, and on April 30, 1980, mailed petitioner's motor fuel tax return for the month of March, 1980.

3. Petitioner asserts that it has no office staff and that its president, Mr. Brummer, is responsible for filing petitioner's motor fuel tax returns. Petitioner further asserts that at the time the returns in issue were filed, it was unaware of a 1976 change in the filing dates for motor fuel tax returns, and that the returns for each month in issue were only a "few days" late.

4. Petitioner alleges that motor fuel tax returns filed in August, 1976, and in subsequent months, were timely, even though petitioner did not realize any change in the filing dates had occurred, and further that it had sufficient funds on hand to make timely payment during the months at issue, with late payment being due solely to the alleged lack of knowledge of the correct filing dates.

5. The motor fuel tax returns actually filed by petitioner during February and March of 1980 state on their title sheets (first page) that "[t]his return must be filed...not later than the last day of the month following that for which the report is made.". The returns bear a printing date of June, 1973.

6. By a letter dated May 23, 1980, petitioner stated that it had never received any of the "more current" forms stating that payments are due on or before the 27th of the month, except for February which is due March 20.

7. By a letter dated September 25, 1980, the Audit Division advised petitioner that in June, 1976, a notice had been sent to all distributors advising of the 1976 legislative change regarding the filing of motor fuel tax

returns, and further that for a number of months prior to petitioner's late filing, it had filed its returns on "current forms".¹

CONCLUSIONS OF LAW

A. That pursuant to section 287 of the Tax Law (as amended by L. 1976, Ch. 94, effective August 1, 1976), every distributor shall, on or before the twenty-seventh day of each month, except March, and on or before the twentieth day of March, file a return stating, inter alia, the number of gallons of motor fuel sold during the preceding calendar month.²

B. That pursuant to section 289-b.1 of the Tax Law, a distributor which fails to file a return within the time required shall forfeit to the state a penalty of five per centum of the amount of tax determined to be due plus one per centum of such amount for each month of delay after the first month; but the Tax Commission may remit all or any part of such penalty if it is satisfied that the delay was excusable.

C. That petitioner has not demonstrated such grounds for its late filing as would justify reduction or cancellation of the penalties at issue herein. The August, 1976 effective date of the amendment to section 287 of the Tax Law establishing the change in filing dates for motor fuel tax returns occurred more than three years prior to the filing periods at issue herein. Notices of the

¹ The title sheets (first page) of motor fuel tax returns printed in May, 1976, and thereafter, in part state: "[f]ile return for each month, except February, on or before the 27th day of the month following that month for which the report is made. Return for February is to be filed on or before the 20th day of March."

² Prior to amendment in 1976, section 287 of the Tax Law provided, in pertinent part, that "[e]very distributor shall, in each month, file...a return...stating the number of gallons of motor fuel sold...during the preceding calendar month..." (emphasis added).

amendment were sent to distributors by the Audit Division. Furthermore, petitioner filed some returns on "current forms", which on their face show due dates pursuant to the 1976 amendment.

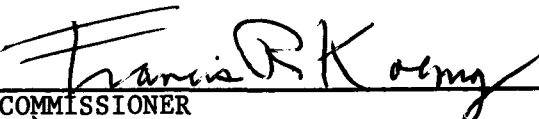
D. That the petition of Edson Oil Co., Inc. is hereby denied and the Notices of Penalty dated April 17, 1980 and May 20, 1980 are sustained.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 21 1983


PRESIDENT


COMMISSIONER


COMMISSIONER