

STATE TAX COMMISSION

### AFFIDAVIT OF MAILING

*Joan Coughlin*  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Tenneco Oil Co. :  
AFFIDAVIT OF MAILING  
for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Motor Fuel Tax :  
under Article 12A of the Tax Law for the Period :  
9/81-11/82. :  
:

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State of New York :  
ss.:  
County of Albany :

Doris E. Steinhardt, 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 18th day of February, 1986, he served the within notice of Decision by certified mail upon Ronald E. Raven, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ronald E. Raven  
6375 Queens Mill Rd.  
Mabelton, GA 30059

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  
18th day of February, 1986.

Doris E. Steinhardt

Jean Conaghan  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

February 18, 1986

Tenneco Oil Co.  
P.O. Box 76045  
Atlanta, GA 30328

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  
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  
Ronald E. Raven  
6375 Queens Mill Rd.  
Mabelton, GA 30059  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
TENNECO OIL COMPANY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Motor Fuel Tax under Article 12-A of	:	
the Tax Law for the Period September, 1981	:	
through November, 1982.	:	

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Petitioner, Tenneco Oil Company, P.O. Box 76045, Atlanta, Georgia 30328, filed a petition for redetermination of a deficiency or for refund of motor fuel tax under Article 12-A of the Tax Law for the period September, 1981 through November, 1982 (File No. 48779).

A formal hearing was held before Brian L. Friedman, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York, on July 22, 1985 at 1:15 P.M. Petitioner appeared by Ronald E. Raven, Esq. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether the Audit Division properly classified jet fuel sold by petitioner to Doug-Long, Inc. as "motor fuel" which is subject to the taxes imposed by sections 284, 284-a and 284-c of the Tax Law.

FINDINGS OF FACT

1. On August 17, 1983, the Audit Division issued to Tenneco Oil Company (hereinafter "petitioner"), a Notice of Determination of Tax Due Under Motor Fuel Tax Law which determined tax due on 116,367 gallons of jet fuel sold by petitioner to Doug-Long, Inc. for the period September, 1981 through November,

1982. The applicable tax on the said jet fuel was assessed at the rate of eight cents per gallon, resulting in a total tax due of \$9,309.36, plus penalty of \$2,093.39, for a total due of \$11,402.75. The said Notice of Determination explained that its issuance resulted from a field audit of Doug-Long, Inc. for the period September, 1981 through February, 1983 and that tax was determined to be due on that portion of jet fuel which Doug-Long, Inc. had purchased from petitioner and had resold to fixed base operators for use in aircraft.

2. Petitioner is a distributor of motor fuels registered pursuant to the provisions of Article 12-A of the Tax Law, having been assigned Registration Number M1574. Doug-Long, Inc. is a registered distributor of diesel motor fuel and, since March, 1981, has been registered as a distributor of propane.

3. There are three separate grades of kerosene, known as K-1, K-2 and Jet A. K-1 is highly refined kerosene which is suitable for use in home space heaters since it produces fewer pollutants than the other grades. K-2 is most often used in kerosene lanterns and outdoor kerosene heaters and is also used as a solvent and as a diluent for diesel fuel. Jet A is kerosene which meets the jet fuel specifications for airlines.

4. Petitioner transports a product known as Buckeye 82 from its Gulf Coast Refining Center to its Baldwinsville, New York terminal through the Buckeye Pipeline. Buckeye 82 meets both the Jet A and K-2 specifications. When the Buckeye 82 comes into the terminal via the pipeline, it is stored in a tank designated as Tankage One. For the period at issue, that portion of the Buckeye 82 which was to be sold by petitioner as jet fuel went through a three-stage filtration process before going through a loading rack and into the truck of a customer. The Buckeye 82 which was sold by petitioner as K-2 or domestic kerosene passed from the storage tank directly to a loading rack without

being filtered. At the Baldwinsville, New York terminal, petitioner has an automated loading rack which dispenses gasoline, Jet A and K-2 kerosene. A customer purchases one of the aforesaid products by pulling his truck to the proper product stop and putting his credit card into the automated terminal at which time he receives a bill for the product purchased. Since the product sold as jet fuel is sold on a longer term contract than the K-2 kerosene, the price per gallon of the jet fuel will often differ from that of the kerosene. The Buckeye 82 is not combined with any other product by petitioner prior to its being sold as jet fuel.

5. On August 20, 1984, petitioner hired E. W. Saybolt & Co., Inc., an independent laboratory, to take five gallons of fuel from the loading rack of the jet fuel and five gallons from the loading rack of the product sold as K-2 kerosene to test each product for gravity, weight per unit, volume, color and distillation to determine whether the products were the same. The results of this analysis show that the products sold as jet fuel and as kerosene are the same product.

6. Gasoline is used in internal combustion engines and is ignited by applying a spark. Jet kerosene fuel and diesel motor fuel are not ignited, but are combusted through temperature and pressure. The basic difference between jet kerosene fuel and diesel motor fuel is that jet kerosene fuel is lighter in gravity, burns more easily and is a more highly refined product.

7. From March 13, 1981 through February 15, 1983, the audit period of Doug-Long, Inc., petitioner sold to Doug-Long, Inc. 278,088 gallons of product that was invoiced as kerosene and 317,816 gallons of product invoiced as Jet A fuel. Of the product invoiced as Jet A fuel, 116,367 gallons were sold by Doug-Long, Inc. to fixed base operators for use in aircraft. The remaining

Jet A fuel was sold by Doug-Long, Inc. at its truck stop or was sold to heating oil jobbers for use in domestic heating units.

8. The Audit Division relies on a memorandum of May 15, 1956 from John J. Purcell, Assistant Director of the Miscellaneous Tax Bureau, to motor fuel distributors which states that "Jet fuel, Turbo fuel and other similar fuels presently being used by air transportation companies, have been classified as a motor fuel." Petitioner contends that, at the time of the issuance of the aforesaid memorandum, most airplanes were of the turbo propeller variety which used aviation gasoline, a product suitable for internal combustion engines. Petitioner further contends that its jet fuel product is pure kerosene which is not blended or compounded with any other product and that kerosene is specifically included within the definition of "diesel motor fuel" in section 282-a of the Tax Law and is specifically excluded from the definition of "motor fuel" in section 282(2) of the Tax Law.

#### CONCLUSIONS OF LAW

A. That section 282-a of the Tax Law provides as follows:

"As used in this section, 'Diesel motor fuel' means crude oil and motor fuel commonly used in the operation of an engine of the Diesel type. The provisions of this section shall be controlling with respect to 'Diesel motor fuel,' whenever they are in conflict with the provisions of the other sections of this article. In all other respects such other sections shall apply to Diesel motor fuel as well as to other motor fuels."

20 NYCRR 420.1(b)(1) provides:

"Diesel motor fuel means kerosene, crude oil, fuel oil and motor fuel commonly used in the operation of an engine of the diesel type."

B. That section 282.2 of the Tax Law provides as follows:

"'Motor fuel' means gasoline, benzol or other product, except kerosene and crude oil, which is suitable for use in operation of a motor vehicle engine, but if kerosene or crude oil is compounded or mixed with any other product or products, and the resulting compound

or mixture is suitable for use in the operation of any such motor vehicle engine, such resulting compound or mixture in its entirety shall be a 'motor fuel'." (Emphasis added.)

C. That the product known as Buckeye 82 is kerosene and the sale of Buckeye 82 by petitioner to Doug-Long, Inc. was a sale of diesel motor fuel and not a sale of motor fuel.

D. That section 282-a of the Tax Law provides, in pertinent part:

"Any person who makes retail sales of Diesel motor fuel in this state, any person who purchases or stores in bulk Diesel motor fuel used in whole or in part to operate any motor vehicle owned, leased or operated by him, and any person registered as the owner under the vehicle and traffic law of a motor vehicle using Diesel motor fuel which is operated on the public highways of this state..., shall be a distributor within the meaning of this article.

\* \* \*

Such persons shall pay a tax on the amount of such retail sales and on the amount of such use,...".

The terms "retail sale" and "bulk purchase" are defined in 20 NYCRR 420.1(b)(2) and (3) as follows:

"Retail sale means making or offering to make any sale to a consumer of such fuel which is delivered directly to a motor vehicle for its operation on the public highways; thus either delivery into the fuel tank of a motor vehicle, or into a drum, can, barrel, auxiliary tank or other receptacle on a diesel-powered motor vehicle from which fuel is supplied directly to a vehicle, is a retail sale.

Bulk purchase means any purchase of diesel motor fuel by a consumer to whom such fuel has not been sold at retail."

E. That petitioner is not a distributor of diesel motor fuel and its sale of Buckeye 82 to Doug-Long, Inc. was not a retail sale subject to the taxes on diesel motor fuel imposed by sections 282-a, 282-b and 282-c of the Tax Law.




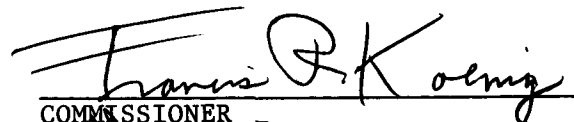
F. That the petition of Tenneco Oil Company is granted and the Notice of Determination of Tax Due Under Motor Fuel Tax Law issued August 17, 1983 is cancelled in full.


DATED: Albany, New York

FEB 18 1986

STATE TAX COMMISSION

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER