

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
United Merchants & Manufacturers, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Highway Use Tax :
under Article 21 of the Tax Law for the Quarters :
Ending 6/30/77, 12/31/77, 3/31/78 & 6/30/78. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of May, 1983, he served the within notice of Decision by certified mail upon United Merchants & Manufacturers, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

United Merchants & Manufacturers, Inc.
Mechanic Street
Fort Edward, NY 12828

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
6th day of May, 1983.

David Parchuck

James A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
United Merchants & Manufacturers, Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Highway Use Tax :
under Article 21 of the Tax Law for the Quarters :
Ending 6/30/77, 12/31/77, 3/31/78 & 6/30/78. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of May, 1983, he served the within notice of Decision by certified mail upon Peter Siegel, Vice President, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peter Siegel, Vice President
Colonie Trucking Leasing Corp.
1912 Central Ave.
Albany, NY 12205

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
6th day of May, 1983.

David Parchuck

Annice C. Heggen

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

United Merchants & Manufacturers, Inc.
Mechanic Street
Fort Edward, NY 12828

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) 510 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 Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 30 days 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
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Peter Siegel, Vice President
Colonie Trucking Leasing Corp.
1912 Central Ave.
Albany, NY 12205
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
UNITED MERCHANTS & MANUFACTURERS, INC.	:	DECISION
for a Hearing to Review a Determination of	:	
Fuel Use Tax under Article 21 of the Tax Law	:	
for the Quarters Ended June 30, 1977,	:	
December 31, 1977, March 31, 1978 and June 30,	:	
1978.	:	

Petitioner, United Merchants & Manufacturers, Inc., Merchant Street, Fort Edward, New York 12828, filed a petition to review a composite denial of four separate claims for refund of fuel use taxes under Article 21 of the Tax Law for the quarters ended June 30, 1977, December 31, 1977, March 31, 1978 and June 30, 1978 (File No. 27586).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Office Campus, Albany, New York on August 9, 1982 at 2:45 P.M. Petitioner appeared by Peter Siegel, Vice President, Colonie Truck Leasing Company, Inc. The Audit Division appeared by Paul B. Coburn, Esq. (Larry Newman, Esq., of counsel).

ISSUE

Whether the applications for refund of fuel use taxes were timely.

FINDINGS OF FACT

1. On August 29, 1979, the Audit Division received four claims for refund of fuel use tax from the Decora Division of United Merchants & Manufacturers, Inc. as follows:

<u>QUARTER ENDED</u>	<u>AMOUNT</u>
June 30, 1977	\$1,283.36
December 31, 1977	1,310.78
March 31, 1978	1,259.64
June 30, 1978	83.43
Total	<u>\$3,937.21</u>

On August 30, 1979, the Audit Division denied the four claims for refund on the grounds that such claims were not filed within one year from the end of the quarter for which the credit was accrued, as provided by statute.

CONCLUSIONS OF LAW

A. That United Merchants & Manufacturers, Inc. failed to file its claims for refund of fuel use taxes within one year, as required by section 503-a-3 of the Tax Law, and, therefore, said claims for refund are barred by the statute of limitations.


B. That the petition of United Merchants and Manufacturers, Inc. is denied and the refund denial of the Audit Division dated August 30, 1979 is sustained.

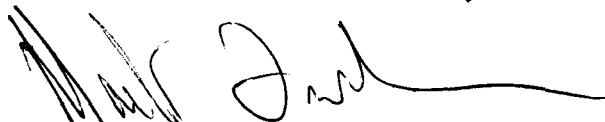
DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983


PRESIDENT


COMMISSIONER


COMMISSIONER