

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
General Foods Corp. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of NYS & NYC Income :
Tax under Article 22 & 30 of the Tax Law for the :
Period 7/1/78-7/15/78. :
_____:

AFFIDAVIT OF MAILING

State of New York
County of Albany

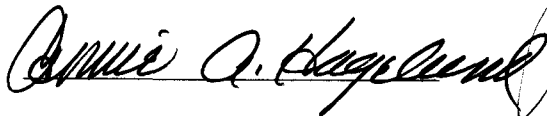
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of June, 1982, he served the within notice of Decision by certified mail upon General Foods Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

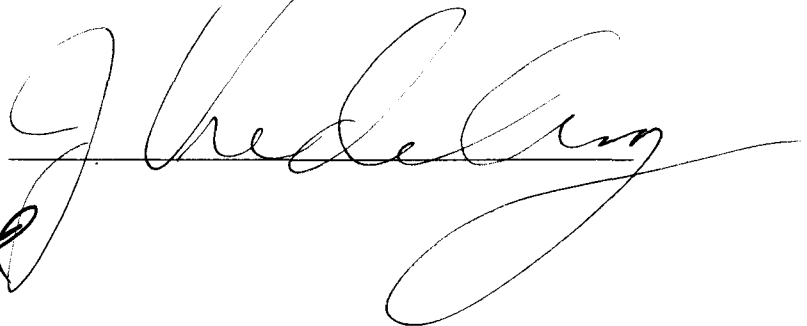
General Foods Corp.
c/o Salvatore F. Andreoli
250 North St.
White Plains, NY 10625

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
4th day of June, 1982.


Annie A. Haglund



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
GENERAL FOODS CORPORATION
for Redetermination under Articles 22 and 30
of the Tax Law for the Period July 1, 1978
to July 15, 1978.

DECISION

Petitioner, General Foods Corporation, 250 North Street, White Plains, New York 10625, filed a petition for a redetermination under Articles 22 and 30 of the Tax Law for the period July 1, 1978 to July 15, 1978 (File No. 28440).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 20, 1981 at 1:15 P.M. Petitioner appeared by Salvatore F. Andreoli, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner was liable for the payment of interest in the amount of \$18,127.10 for late filing and late payment of New York income tax withheld for the period July 1, 1978 to July 15, 1978.

FINDINGS OF FACT

1. On March 16, 1979, the Audit Division issued a Notice of Failure to File Returns of New York State/City of New York Income Tax Withheld for the period July 1, 1978 to July 15, 1978 to General Foods Corporation.

2. On April 8, 1979, petitioner filed the Employers' Return of Tax Withheld together with remittance in the amount of \$295,970.08 for the period July 1, 1978 to July 15, 1978. In addition, it advised on the back of the

Notice of Failure to File Returns that the Employers' Return was timely filed with the required remittance, that the General Foods accounting personnel ascertained that its check had not cleared the bank, and have issued a stop payment on the original check of \$295,970.08.

3. On September 28, 1979, the Audit Division issued an assessment in the amount of \$18,127.10 representing interest from the return's due date of July 19, 1978 until payment date of April 8, 1979.

4. Petitioner's tax accountant by verified affidavit stated that on July 18, 1978, in a pre-addressed pink envelope provided by the State, she mailed General Foods Corporation's semi-monthly New York State and City of New York Employers' Return of Tax Withheld covering the period July 1, 1978 to July 15, 1978 together with check number 684765 dated July 17, 1978 in the amount of \$295,970.08 payable to New York State. She also swore that at the same time she similarly mailed a return and check number 684761 in the amount of \$10,680.98 for Birds Eye, Inc. which was received by the State.

5. Petitioner's voucher jacket 7-3876 showed accounting entries for both the General Foods Corporation check of \$295,970.08 and the Birds Eye, Inc. check of \$10,680.98. A photocopy of a check request within the petitioner's offices for payment indicated receipt on July 17, 1978 by Accounts Payable. Photocopies of checks, one to the City of Philadelphia and the other to Department of Corporation and Taxation - Boston, Massachusetts, which immediately preceded and succeeded the missing check made to New York State, were submitted.

6. Petitioner had paid without interest New York State and New York City taxes withheld for the calendar year 1979, \$8,285,379.08; 1978, \$7,516,870.45; 1977, \$6,838,839.11; and for 1976, \$5,897,190.37, for a grand total of \$28,538,279.01.

CONCLUSIONS OF LAW

A. That when it is shown that a letter has been properly mailed, there arises a presumption that it was delivered to its addressed destination, News Syndicate Co. v. Gatti Paper Stock Corp., 256 N.Y. 211, 176 N.E. 169.

B. That petitioner has submitted substantial evidence that a withholding return for the period July 1, 1978 to July 15, 1978, together with a check in the appropriate amount was mailed on July 18, 1978 to the New York State Department of Taxation and Finance. This evidence gives rise to the presumption the return was delivered and was therefore timely filed.

C. That although the presumption that a letter mailed is delivered is a rebuttable one, the Tax Department has not presented any evidence to overcome this presumption.

D. That the petition of General Foods Corporation is granted and the assessment issued on September 28, 1979 is cancelled.

DATED: Albany, New York

JUN 04 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

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

June 4, 1982

General Foods Corp.
c/o Salvatore F. Andreoli
250 North St.
White Plains, NY 10625

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) 690 & 1312 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 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
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

MEMORANDUM

AD-53.1 (3/81)

TO: State Tax Commission

OFFICE: Secretary to the
State Tax Commission

FROM: Michael Alexander

DATE: February 24, 1982


SUBJECT: General Foods Corporation

This is a very clever proposed decision. Waiver of interest, which is prohibited, is accomplished here by reliance on the presumption of delivery predicated on proper mailing.

In Charlson Realty Company v US 384 F2d 434, a cited case in this area, the presumption is laid out. 1) postal employees are presumed to discharge their duties in a proper manner; 2) a letter which is properly sealed, stamped, addressed and deposited in United States mails is presumed to reach the addressee and be received by him in the due course of the mails; 3) negative evidence as to habit, custom and procedure may create a presumption that ordinary course of business procedure was followed on a given day -- BUT the presumption of arrival in due course of the mails cannot be overcome by another presumption. What is needed is positive proof, direct proof of affirmative facts.

This presumption of delivery is rebuttable but must be done by proven facts sufficient to raise the presumption of arrival of an item in due course of the mails and such proof is entitled to like value as evidence tendency to show arrival. Legille v Dann 544 F2d 1 Presumption of mailing is merely a rule of law compelling a conclusion in the absence of evidence to the contrary according to Wigmore.

Should this argument arise with greater frequency, departmental practices may need review. In that regard, Rosengat v US 181 F. Supp 275 a case involving the U.S. Patent Office provides a good basis for a system of mail receipt that could overcome the presumption of delivery.


MICHAEL ALEXANDER
Secretary to the
State Tax Commission

MA/lar



New York State Department of
TAXATION and FINANCE

Processing Division
State Campus, Albany, New York 12227

General Motors Central Office

**WAIVER, MODIFICATION, OR CANCELLATION OF PENALTY AND INTEREST
REQUIRING APPROVAL OF THE STATE TAX COMMISSION**

SS # OR ID # NY-1025001		
TAXPAYER'S NAME General Motors Central Office Corp.		
STREET ADDRESS 3044 West Grand Blvd.		
CITY Detroit	STATE Michigan	ZIP CODE 48202

TAXING APPLICATION:

- ☐ Corporation Tax
☐ Personal Income Tax
☐ Sales Tax
☒ Withholding Tax
☐ Miscellaneous Tax:

ASSESSMENT NO. W8107290001
FILING PERIOD 2/16 - 2/28/81

INTEREST AND PENALTY ASSESSED \$ 19,433.13
INTEREST PAID \$ 2,277.26
RECOMMENDED CANCELLATION \$ 17,155.87

In accordance with established policy, approval of the State Tax Commission (*more than one member*) is required where the proposed cancellation of interest and/or penalty is for an amount in excess of \$5,000.00 or for a situation not covered in policy memoranda.

REASON FOR WAIVER, MODIFICATION OR CANCELLATION:

The original check and return were mailed on 2/27/81; upon receipt of our notice of failure to file for this period, they stopped payment on the original and submitted a replacement check.

Approval Recommended By:			
NAME <i>Harry M. Stobbe</i>	TITLE <i>Chief of Staff</i>	DATE <i>2/26/82</i>	
Approval Recommended By:			
NAME	TITLE	DATE	
ACTING Commissioner			
DATE: _____ APPROVED: _____ DISAPPROVED: _____			
Commissioner <i>Frank R. Keating</i>	DATE: <i>2/17/82</i>	APPROVED: <i>FK</i>	DISAPPROVED: _____
Commissioner <i>[Signature]</i>	DATE: <i>2/18</i>	APPROVED: <i>[Signature]</i>	DISAPPROVED: _____