

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the ~~RETURN~~ Application

of

DONALD DIVIT d/b/a DON'S ATLANTIC

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY ~~(CERTIFIED)~~ MAIL

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~Year(s)~~ Period 8/1/65 :  
through 2/29/68.

State of New York  
County of Albany

JANET MACK

, being duly sworn, deposes and says that

she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 15th day of October , 19 , she served the within  
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon Donald Divit,

d/b/a Don's Atlantic ~~(representative of)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Donald Divit  
d/b/a Don's Atlantic  
c/o Kenneth P. Helisek, Esq.

Conte & Helisek  
398 Main Street  
Johnson City, New York, 13790  
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~  
~~xx~~ 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

15th day of October , 1975.

Wm. H. H. H.

Janet Mack

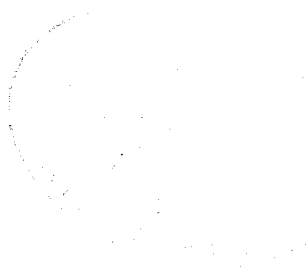
STATE OF NEW YORK  
 Department of Taxation and Finance  
 STATE CAMPUS  
 ALBANY, N. Y. 12227



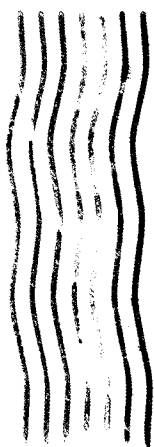
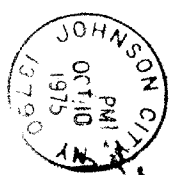
☒ No return received  
☐ Moved, not forwarding  
☐ Addressed unknown

Mr. Donald Divitt  
 d/b/a Don's Atlantic  
 38 Hudson Street  
 Johnson City, New York

Att.  
 L. Robert Lechner  
 Bldg #9



AT 6  
11/11



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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the ~~XXXXXXXX~~  
Application :

of

DONALD DIVIT d/b/a DON'S ATLANTIC :

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (~~XXXXXXXX~~) MAIL

For a Redetermination of a Deficiency or  
a Refund of Sales and Use :  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~Year(s)~~ Period August 1, :  
1965 through February 29, 1968.

State of New York  
County of Albany

Janet Mack , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 9th day of October , 1975, she served the within  
Notice of ~~XXXXXXXX~~ (or Determination) by (~~XXXXXXXX~~) mail upon Donald Divit  
d/b/a Don's Atlantic (~~representative~~ of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

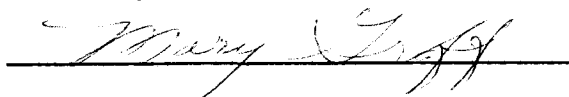
Mr. Donald Divit  
d/b/a Don's Atlantic  
38 Hudson Street  
Johnson City, New York

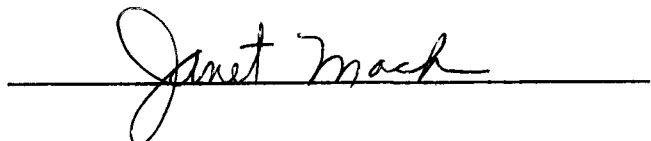
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative~~  
of) 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

9th day of October , 1975.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the ~~Petition~~  
Application :  
of

DONALD DIVIT d/b/a DON'S ATLANTIC :

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY ~~(CERTIFIED)~~ MAIL

For a Redetermination of a Deficiency or  
a Refund of Sales and Use :  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~Year(s)~~ Period August 1,  
1965 through February 29, 1968.

State of New York  
County of Albany

Janet Mack , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 9th day of October , 1975 , she served the within  
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon Kenneth P. Helisek, Esq.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Kenneth P. Helisek, Esq.

Conte & Helisek  
398 Main Street

Johnson City, New York 13790  
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

9th day of October , 1975.

*[Signature]*

*Janet Mack*



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT  
MILTON KOERNER

~~XXXXXXXXXXXXXXXXXXXX~~

BUILDING 9, ROOM 341A  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

Mr. Wright  
Mr. Coburn  
Mr. Leisner

(518) 457-3336

DATED: Albany, New York  
October 9, 1975

Mr. Donald Divit  
d/b/a Don's Atlantic  
38 Hudson Street  
Johnson City, New York

Dear Mr. Divit:

Please take notice of the **DETERMINATION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **1138 and 1243** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Any inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

L. ROBERT LEISNER

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
DONALD DIVIT d/b/a DON'S ATLANTIC :  
for a Revision of a Determination or : DETERMINATION  
for Refund of Sales and Use Taxes under :  
Articles 28 and 29 of the Tax Law for :  
the Period August 1, 1965 through :  
February 29, 1968. :

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Applicant, Donald Divit d/b/a Don's Atlantic, 38 Hudson Street, Johnson City, New York, applied for a revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period August 1, 1965 through February 29, 1968.

A formal hearing was held at the offices of the State Tax Commission, Binghamton, New York, on June 25, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Kenneth P. Helisek, Esq. and the Sales Tax Bureau was represented by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUES

Was the taxpayer, an Atlantic dealer, liable for tax where Atlantic set the pump price so that insufficient sales tax was registered and collected? Was the taxpayer liable for penalties?

FINDINGS OF FACT

1. The taxpayer, Donald Divit d/b/a Don's Atlantic, timely filed New York State sales and use tax returns for the period August 1, 1965 through February 29, 1968.

2. A Notice of Determination of sales and use taxes (and penalties) for the period August 1, 1965 through February 29, 1968, was issued on May 13, 1968, against Donald Divit d/b/a Don's Atlantic, under Notice No. 90,050,783.

3. The taxpayer applied for a revision of the determination of the deficiencies in sales tax.

4. By legal agreements, the Atlantic Richfield Company controlled the pump price charged for gasoline.

5. During the period in question, the pump price was set so that insufficient sales tax was registered and collected.

6. The taxpayer claimed he was not the seller and that Atlantic Richfield Company was. Atlantic Richfield Company owned the gas in the tanks, the station, and controlled the operation.

7. The taxpayer operated the station and collected the sales price on each sale.

8. The examiner failed to assess the Atlantic Richfield Company within the time limitation.

9. The Sales Tax Bureau levied and collected against credits of the taxpayer held by Atlantic Richfield Company in the amount of \$164.07.

10. The Sales Tax Bureau made no other or further assessment in this case for this station's sales tax against Atlantic Richfield Company, and there has been no payment of the balance of the sales tax owed by either Atlantic or the taxpayer.



11. The taxpayer acted in good faith in disputing the assessment.

CONCLUSIONS OF LAW

A. The taxpayer operated the station and was responsible for collection of the sales price and tax. He is liable for the deficiency in sales tax.

B. The taxpayer shall be given credit for the levy of his credits in the amount of \$164.07.

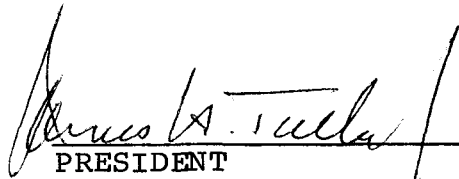
C. The taxpayer acted in good faith in disputing the assessment and all penalties are cancelled.

D. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York

October 9, 1975

STATE TAX COMMISSION

  
PRESIDENT

\_\_\_\_\_  
COMMISSIONER

  
COMMISSIONER