

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PETROLANE-NORTHEAST
GAS SERVICE, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Sales & Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year(s)~~ ^{XXXXXX} or Period(s)
12/1/71 - 2/28/75.

State of New York
County of Albany

John Huhn, 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 6th day of October, 1978, she served the within

Notice of Determination by ~~XXXXXX~~ mail upon Petrolane-Northeast
Gas Service, Inc. ~~(represented by)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Petrolane-Northeast Gas Service, Inc.
P.O. Box 1410
Long Beach, California 90806

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

Sworn to before me this

6th day of October, 1978.

~~XXXXXX~~

John Huhn

In the Matter of the Petition

of

PETROLANE-NORTHEAST
GAS SERVICE, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period(s) :
12/1/71 - 2/28/75.

State of New York
County of Albany

John Huhn, 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 6th day of October, 1978, she served the within Notice of Determination by ~~XXXXXXXXXX~~ mail upon Joseph Gale (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Joseph Gale
Arthur Young & Co.
227 Park Avenue
New York, New York 10017
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 October, 1978.

[Signature]

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PETROLANE-NORTHEAST
GAS SERVICE, INC.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXXX~~ Period(s) :
12/1/71 - 2/28/75.

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
~~she~~ she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 6th day of October, 1978, ~~she~~ she served the within
Notice of Determination by ~~XXXXXXXXXX~~ mail upon Jules Antonville

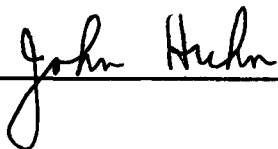
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jules Antonville
1600 East Hill Street
Long Beach, California 90806

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 October, 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ELPEEGE NORTHEAST, INC. and JOHN C. WALLACE, AFFIDAVIT OF MAILING
B. B. BALDRIDGE and W. E. LINSENBARD, Individually and
as officers of Elpeege Northeast, Inc.
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use Taxes :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period(s) :
8/1/65 - 11/30/71.

State of New York
County of Albany


John Huhn , 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 6th day of October , 1978, she served the within
Notice of Determination by ~~(XXXXXX)~~ mail upon Elpeege Northeast, Inc.

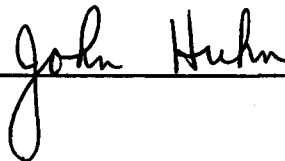
~~(XXXXXXXXXX)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Elpeege Northeast, Inc.
c/o Petrolane-Northeast Gas Service, Inc.
P.O. Box 1410
Long Beach, California 90806
and by depositing same enclosed in a postpaid 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 ~~(XXXXXXXXXX)~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(XXXXXXXXXX)~~ petitioner.

Sworn to before me this

6th day of October , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

ELPEEGE NORTHEAST, INC. ^{of} and JOHN C. WALLACE
B. B. BALDRIDGE and W. E. LINSENBARD, Individually AFFIDAVIT OF MAILING
and as officers of Elpeege Northeast, Inc.
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Sales & Use Taxes :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period(s) :
8/1/65 - 11/30/71.

State of New York
County of Albany

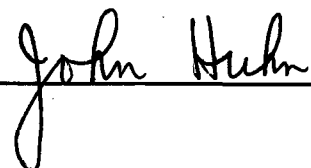
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 6th day of October , 1978 , she served the within
Notice of Determination by (~~XXXXXXXX~~) mail upon Joseph Gale
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Joseph Gale
Arthur Young & Co.
227 Park Avenue
New York, New York 10017
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 October , 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ELPEEGE NORTHEAST, INC. and JOHN C. WALLACE AFFIDAVIT OF MAILING
B. B. BALDRIDGE and W. E. LINSENBARD, Individually
and as Officers of Elpeege Northeast, Inc.
For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Sales & Use Taxes :
Taxes under Article(s) 28 & 29 of the :
Tax Law for the ~~XXXXXX~~ Period(s) :
8/1/65 - 11/30/71

State of New York
County of Albany

John Huhn , 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 6th day of October , 19 78, she served the within
Notice of Determination by (~~XXXXXXXXXX~~) mail upon Jules Antonville

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jules Antonville
1600 East Hill Street
Long Beach, California 90806

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 October , 1978







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

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

October 6, 1978

Petrolane-Northeast Gas Service, Inc.
P.O. Box 1410
Long Beach, California 90806

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1243** 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Michael Alexander
Supervising Tax Hearing
Officer

cc: Petitioner's Representative
Taxing Bureau's Representative



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

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

October 6, 1978

**Elpeege Northeast, Inc.
c/o Petrolane-Northeast Gas Service, Inc.
P.O. Box 1410
Long Beach, California 90806**

Gentlemen:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1138 & 1243** 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Michael Alexander
Supervising Tax Hearing Officer**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :

of :

PETROLANE-NORTHEAST
GAS SERVICE, INC. :

for Revision of a Determination or for
Refund of Sales and Use Taxes under
Articles 28 and 29 of the Tax Law for
the Period December 1, 1971 through
February 28, 1975. :

DETERMINATION

In the Matter of the Application :

of :

ELPEEGE NORTHEAST, INC.
and JOHN C. WALLACE, B. B. BALDRIDGE
and W. E. LINSENBARD, Individually
and as Officers of Elpeege Northeast, Inc. :

for 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
November 30, 1971. :

Applicant, Petrolane-Northeast Gas Service, Inc., P.O. Box
1410, Long Beach, California 90806, filed an application for
revision of a determination or for refund of sales and use taxes

under Articles 28 and 29 of the Tax Law for the period December 1, 1971 through February 28, 1975 (File No. 11803).

Applicant, Elpeege Northeast, Inc., c/o Petrolane-Northeast Gas Service, Inc., P.O. Box 1410, Long Beach, California 90806, filed an application for 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 November 30, 1971 (File No. 17084).

A combined formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on September 6, 1977 at 1:15 P.M. Applicants appeared by Jules Antonville, Tax Manager and by Arthur Young & Co. (Joseph Gale, Manager). The Sales Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss and Harry Kadish, Esqs., of counsel).

ISSUES

I. Whether the rental payments under an equipment lease of personal property entered into on May 1, 1964 and received after August 1, 1965 were subject to New York State sales and use taxes.

II. Whether or not the equipment lease agreement was in fact a security agreement, whereby title passed to the lessees subject to defeasance upon default.

III. Whether or not the charges for leasing the equipment pursuant to the equipment lease agreement, beginning August 1, 1965, are subject to state and local sales and use taxes.

FINDINGS OF FACT

1. On December 8, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Petrolane-Northeast Gas Service, Inc. (hereinafter "Petrolane"), for the period December 1, 1971 through February 28, 1975 in the amount of \$68,453.71. Said Notice was based on a field audit disclosing additional sales and/or use tax due. Petrolane agreed to and did pay the tax in the amount of \$23,265.52. It protested the balance of the tax assessment with respect to rentals of equipment. The applicant timely filed an application for a hearing to review the aforesaid determination.

2. On December 22, 1975, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Elpeege Northeast, Inc. (hereinafter "Elpeege"), John C. Wallace, B. B. Baldrige and W. E. Linsenbard, Individually and as Officers, for the period August 1, 1965 through November 30, 1971 in the amount of \$59,916.67. Elpeege timely filed an application for a hearing to review said Notice of Determination, based on an audit which imposed additional tax on charges for equipment leased to Petrolane-Northeast Gas Service, Inc.

3. The applicants herein are not disputing the figure amounts disclosed on audit.

4. Petrolane is engaged in the sale of LP (liquid propane) gas throughout Pennsylvania, New York and the New England states through its company-owned districts, as well as through independent dealers. The parent company, Petrolane, Inc., is based in California. Effective October 1, 1974, Petrolane, Inc. acquired from Socony Mobil Oil Co., Inc. its 50% interest in the equipment lease agreement, infra. Petrolane then merged Elpeege into Petrolane-Northeast Gas Service, Inc., effective December 31, 1974.

5. On May 1, 1964, Elpeege Northeast, Inc. (a Delaware corporation), as lessor, and both Socony Mobil Oil Co., Inc. (a New York corporation) and Petrolane (a Delaware corporation), as lessees, entered into an agreement of lease whereby each of the lessees hired from the lessor an undivided 50% interest in and to the storage tanks, pipes, trucks, trailers, liquefied petroleum storage and distribution equipment, furnishings, fixtures, equipment and other personal property of lessor for a term of 15 years at a stipulated basic monthly rent. The agreement provided, in part, that "title to the equipment shall at all times remain in Lessor and at no time shall title to any portion thereof become vested in Lessees, and all registrations shall be in the name of Lessor."

6. The applicants did not present any evidence that the parties to the lease equipment agreement intended the lease as security rather than a true lease of personal property.

CONCLUSIONS OF LAW

A. That the equipment lease agreement referred to in Finding of Fact "5", supra, was not a conditional sale or a security agreement, but that it was, in fact, a true lease of tangible personal property.

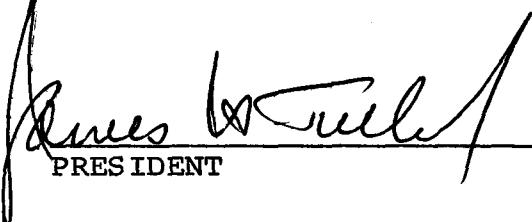
B. That the monthly rental charges under the equipment lease agreement were subject to sales and/or use taxes within the intent and meaning of sections 1101 and 1105 of the Tax Law.

C. That sales and use taxes were properly imposed on monthly rentals, even though the lease agreement was executed prior to the effective date of acts or amendments thereto imposing such taxes. Each rental payment relates to a period of possession. It is this possession for which the lessee contracts and for which the periodic consideration is given. (See Opinion of Counsel - New York State Tax Bulletin, 1965-4, p. 56; Broadacre Dairies, Inc. v. Evans, 193 Tenn. 441; Gandy v. State of Washington, 359 P. 2d 302).

D. That the applications of Petrolane-Northeast Gas Service, Inc. and Elpeege Northeast, Inc. are hereby denied.

DATED: Albany, New York
October 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER